11-0907-11703-2

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
FOR THE MINNESOTA BOARD OF PSYCHOLOGY

In the Matter of the Psychology License of Steven Alan Carlson, Psy.D., L.P. License No. LP0474

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND RECOMMENDATION

The above matter came on for hearing before Administrative Law Judge Barbara L. Neilson on February 23, 1999, at 9:30 a.m. in Courtroom 3 of the Office of Administrative Hearings in Minneapolis, Minnesota. The hearing continued on February 24-26, March 2-3, 8, and 16, 1999. The record closed on July 29, 1999, upon receipt of the Respondent's proposed findings of fact on computer disk.

Kristine I. Legler Kaplan, Assistant Attorney General, Suite 1400, 445 NCL Tower, St. Paul, Minnesota 55101-2131, appeared on behalf of the Complaint Resolution Committee of the Board of Psychology. Philip G. Villaume, Attorney at Law, Philip G. Villaume & Associates, 5200 Willson Road, Suite 150, Edina, Minnesota 55424, appeared on behalf of the Respondent, Dr. Steven A. Carlson.

NOTICE

This Report is a recommendation, not a final decision. The Board of Psychology will make the final decision after a review of the record. The Board may adopt, reject, or modify these Findings of Fact, Conclusions, and Recommendations. Under Minn. Stat. § 14.61, the final decision of the Board shall not be made until this Report has been made available to the parties to this proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Board. Parties should contact the Executive Director of the Board of Psychology, Suite 101, 2700 University Avenue West, St. Paul, Minnesota 55114, to ascertain the procedure for filing exceptions or presenting argument.

STATEMENT OF ISSUE

The issue in this contested case proceeding is whether or not the Respondent has violated various statutes or rules governing the conduct of psychologists in the State of Minnesota and, if so, whether disciplinary action should be taken against the Respondent's license to practice psychology in Minnesota.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. The Respondent received a bachelor's degree in psychology from the College of St. Thomas. He received a master's degree in 1985 in counseling psychology from the Alfred Adler Institute of Chicago and a doctoral degree in clinical psychology from the Minnesota School of Professional Psychology in 1995. He has been licensed as a psychologist by the State of Minnesota since December 1, 1989. T. 808, 1111-12; Ex. 106.[1]

2. During the summer of 1990, Respondent completed a course in professional conduct as part of his studies to earn his doctorate in psychology. Respondent received an "A" grade in this course. Ex. 121.

3. In approximately April of 1990, Respondent began practicing as a psychologist in the same offices as Therapists 1, 2, 3, 5, and 6 (hereinafter referred to as the "Affiliated Group"). During approximately 1994, Respondent and these other therapists began discussing a more formal professional association or partnership. T. 89-91, 143-44, 408, 479. 679, 1265, 1277.

Alleged Client No. 1 and Client No. 2

4. Alleged Client No. 1 is a female who has been married to Client No. 2 for approximately 16 ½ years. They have three children. T. 48, 76.

5. During the spring of 1987, Alleged Client No. 1 and Client No. 2 began attending the same church as the Respondent. Alleged Client No. 1 met Respondent at a church retreat in Wisconsin during the summer of 1987. She and Client No. 2 also became acquainted with Respondent's then-wife, Kristi, and their children. T. 77, 391, 600, 1136.

6. Respondent and his wife became friends with Alleged Client No. 1 and her husband (Client No. 2). T. 633, 1138, 1139, 1143, 1238. On occasion, the families of Respondent and Alleged Client No. 1 socialized with each other. One of Respondent's children attended a birthday party held by the son of Alleged Client No. 1. Alleged Client No. 1 and her husband got together with Respondent and his wife for dinner at each other's homes on two occasions during 1988-1992. They attended church retreats and leadership meetings together and swam together at an athletic club. They took a weekend ski trip to Indianhead, Michigan, together in approximately February of 1991. During that ski trip, Kristi Carlson and Client No. 2 went to bed early and Respondent and Alleged Client No. 1 stayed up late talking. They also went to Lutsen one weekend in December of 1993, and to Park City, Utah, in January of 1993. T. 77-78, 392, 394-95, 397-98, 400-01, 432, 1137-41, 1152-555, 1162, 1247.

7. By the fall of 1992, both Respondent and Kristi Carlson and Alleged Client No. 1 and Client No. 2 had left Church No. 3 and had started attending Church

No. 1. Their relationships grew even closer at that time and they had even more contact with each other as couples. T. 1154, 1162.

8. Prior to October, 1992, Client No. 2 occasionally went running with Respondent. Client No. 2 and Respondent ran a half marathon together in 1988. T. 400, 634, 1140.

9. Alleged Client No. 1 and Respondent began running and working out together in September or October of 1992. T. 399. During November and December of 1992, Alleged Client No. 1 and Respondent went running together approximately two to three times a week, both inside and outside. T. 459, 461, 464, 1144, 1166. At some point during the fall of 1992 or winter of 1992-93, Respondent and Alleged Client No. 1 began training together for a half-marathon that was held in February, 1993. They also ran in Grandma's Marathon on approximately June 19, 1993. T. 458, 635, 1145-46, 1166-67. Occasionally they would go out to coffee or breakfast after running, meet for lunch, or go for a walk. T. 1145, 1147.

10. From approximately fall of 1990 through spring of 1991, Alleged Client No. 1 and Respondent both attended a weekly church group for persons from dysfunctional families. T. 78-79, 84, 85, 377-78, 1152. Alleged Client No. 1 is a Certified Public Accountant, and her attendance in the church group was sporadic beginning in January, 1991, and continuing during tax time. T. 76, 79-80.

11. During her participation in the church group, Alleged Client No. 1 disclosed to other members of the group some issues relating to her family of origin including the fact that she had been sexually abused by her brother when she was a child. The Respondent was present in the group at some point when Alleged Client No. 1 discussed the sexual abuse. T. 81-84.

12. At Alleged Client No. 1's request, the Respondent referred her to Therapist No. 1 for individual therapy in approximately September or October, 1990. T. 85-86.

13. From approximately September or October 1990 through October 1, 1992, Alleged Client No. 1 attended individual therapy sessions with Therapist No. 1. Alleged Client No. 1 also met with Therapist No. 1 on at least two occasions in November of 1992 and January of 1993. T. 87, 89; Ex. 2. The offices of Therapist No. 1 were at first located in a church. In approximately June of 1992, Therapist No. 1 transferred into the offices of the Affiliated Group where the Respondent had his office. T. 87; Ex. 2. The office of Therapist No. 1 was located downstairs from the waiting area and Respondent's office in the facility of the Affiliated Group. Alleged Client No. 1 saw Respondent in passing at times when she saw Therapist No. 1 and they exchanged brief greetings. T. 89-90, 97; Ex. 118.

14. As a therapeutic measure to address sexual abuse issues, Therapist No. 1 referred Alleged Client No. 1 to a sexual abuse/incest survivor group led by Therapists No. 2 and No. 3 in the Affiliated Group. T. 91-92, 172; Ex. 4. Alleged Client No. 1

participated in the group for two-hour sessions on Monday evenings from November, 1991, to December or January of 1993. T. 93, 404, 405, 478; Ex. 4 at 400004, 400006.

15. Beginning in approximately January, 1992, Alleged Client No. 1 and her husband, Client No. 2, were in marital counseling with Therapists No. 13 and 14. T. 537-38.

16. At some point between approximately June of 1992 and December of 1992, Alleged Client No. 1 told Therapist No. 1 that she was attracted to Respondent, due to the conversations that she had with Respondent during the Indianhead ski trip. T. 397, 394-95, 397, 400-01, 411, 414, 432. Alleged Client No. 1 also told Therapist No. 1 that she was not receiving emotional support from her husband and was tired of pretending. T. 415.

17. On or about September 23, 1992, Alleged Client No. 1 became upset after she awoke with a "dream/memory" of performing oral sex when she was a child. T. 94-95, 482; Ex. 2 at 200014. Later that morning, Alleged Client No. 1 went in to see Therapist No. 1. She was still crying and was visibly distraught while she was waiting for her appointment with Therapist No. 1 at the Affiliated Group. Respondent saw Alleged Client No. 1, noticed that she looked upset, and suggested that she step into his office for a minute. T. 95, 1161-62, 1165. Alleged Client No. 1 then told Respondent about the "dream/memory." Respondent listened carefully to her and responded in a caring and sensitive manner. T. 95-96, 482-83, 1163-65.

18. In October 1992, Alleged Client No. 1 chose to continue individual therapy with Therapist No. 2, whose office also was located at the Affiliated Group where Respondent also practiced. She met with Therapist No. 2 approximately once a week between approximately October 1, 1992, and February 1, 1993. T. 86, 87, 89, 286, 413-14, 417; Exs. 2, 3, 4.

19. During the fall of 1992 and thereafter, Alleged Client No. 1 told Respondent of the purpose for her being in therapy, i.e., to deal with childhood sexual abuse by her brother. T. 125, 349.

20. To celebrate Respondent's birthday, Alleged Client No. 1 brought him lunch at his office on October 30, 1992. T. 99-100, 1167. Alleged Client No. 1 called Respondent on a Monday about wanting to drop off lunch for his birthday, and Respondent responded to her on a Wednesday saying that would be fine. T. 530, 1168-69. On the day of the birthday lunch, Alleged Client No. 1's husband and Respondent's wife joined Respondent and Alleged Client No. 1 for a period of time. Later, when Alleged Client No. 1 and Respondent were alone, they talked about the Hope Group and Respondent's involvement with Witness No. 4. T. 1170. Respondent talked about the importance of having clear, concise boundaries and parameters of acceptable behavior in male/female relationships. Alleged Client No. 1 told Respondent that she was feeling manipulated and said that she felt like Respondent knew that she had an attraction for him. Respondent said that he did not know that. During the remainder of their conversation, Alleged Client No. 1 and Respondent acknowledged a

mutual attraction for each other. Respondent said that he "though [he] got in bed with the wrong woman" during their ski trip to Indianhead. T. 99-103, 278, 429, 486, 529, 784-85, 1170-72.

21. Respondent called Alleged Client No. 1 on October 31, 1992, and continued the discussion of their mutual attraction. T. 106-07.

22. Respondent considered October 30, 1992, to be the "anniversary date" of his relationship with Alleged Client No. 1. T. 309, 310, 334-35, 338; see Exs. 11, 12, 26.

23. After the October 30, 1992, lunch, the friendship between Respondent and Alleged Client No. 1 began to deepen. The amount of time that they spent together increased and they began to engage in more intimate conversations. They also started getting together more as couples. T. 1174-77.

24. On October 29, 1992, November 5, 1992, and November 12, 1992, Respondent saw Alleged Client No. 1's husband, Client No. 2, for three therapy sessions. Client No. 2's father had died on September 24, 1992, and he sought professional help in recovering from the grief associated with the death. T. 412-13, 600-601, 609-10, 627, 631, 1239, 1243, Exs. 30, 115. Respondent billed Client No. 2's insurance company for those sessions. T. 600-01, 609-10, 1285-86; Exs. 30, 115.

25. Respondent did not raise any objection to seeing Client No. 2 as a client, and Respondent never told Client No. 2 at any time that he had acknowledged an attraction for his wife. T. 601-03.

26. Respondent never told Client No. 2 about the conversation he had with Alleged Client No. 1 on October 30, 1992, in which Respondent and Alleged Client No. 1 acknowledged their attraction to each other, or about his deepening relationship with Alleged Client No. 1. T. 601-03, 1248. Respondent assumed at that time that the relationship between he and Alleged Client No. 1 was going to remain a friendship and not go beyond that. T. 601-03, 1286.

27. Client No. 2 felt uncomfortable with the relationship that he perceived was taking place between Alleged Client No. 1 and Respondent and decided to terminate therapy. T. 604. At their third session on or about November 12, 1992, Client No. 2 informed Respondent that he no longer wished to see Respondent for psychological services and did not feel comfortable going to him for therapy. Respondent assumed that there was not a need for further therapy sessions. T. 1246. He did not conduct a closure session with Client No. 2 or refer Client No. 2 to another therapist for any further services. T. 604-605, 611, 666.

28. An entry in the journal of Alleged Client No. 1 that was written between November 10 and November 16, 1992, states, "I know that I know I don't want anything else but a friendship" from Respondent. Ex. 6 at 600091.

29. During approximately the first or second week of November 1992, Respondent gave Alleged Client No. 1 his personal journals dating from approximately 1986 or 1987 through October or November of 1992 to read because he wanted someone to "know" him. T. 237, 243. Alleged Client No. 1 did, in fact, read the journals. T. 244. The journals contained information about Respondent's relationships with or thoughts about several other women, including physical, sexual, or emotional desires. T. 249-50, 267. Some of the journal entries of Respondent that he gave to Client No. 1 for review contained information about his desire for a named individual who was a therapy client of Respondent. T. 255-57.

30. On or about December 10, 1992, Alleged Client No. 1 gave Respondent her journals to review. Respondent sometimes provided written feedback on her journal entries. T. 52-53, 57, 70, 221-24, 271-72, 275-76, 317; Exs. 6 at 600001-02, 17.

31. At various points between approximately October 30, 1992, and October 31, 1993, Respondent gave Alleged Client No. 1 greeting cards, some of which were romantic in nature. T. 231-32, 308-38; Exs. 11-16, 18-23, 25-28, 46. He also gave her two books of poems entitled "I Will Love You" and "True Friends Always Remain in Each Other's Heart" with handwritten inscriptions inside the front covers for her birthday in August of 1993. T. 304-07; Exs. 9-10. Alleged Client No. 1 also sent Respondent cards and wrote him letters and notes expressing encouragement and appreciation. After April of 1993, she gave him cards and/or letters telling her that she loved him. T. 491-92, 1179-80, 1229-31, 1455.

32. Respondent had a picture of a sailboat in his office. During their conversations in his office, Alleged Client No. 1 and Respondent frequently talked about that sailboat and how it could be related to them as individuals all alone in a big sea. T. 325. In a journal entry dated December 9, 1992, Alleged Client No. 1 mentioned a sailboat image and a feeling of being alone and sad. Ex. 7 at 700005-08. Respondent gave Alleged Client No. 1 a greeting card in approximately November or December of 1992 with a sailboat image. T. 325; Ex. 19.

33. Between the lunch on October 30, 1992, and mid-December, 1992, Alleged Client No. 1 and Respondent met for lunch at a restaurant once a week. She saw Respondent at a local health club two to three times per week, where they ran together and talked. They also talked on the telephone two to seven times a week. They either saw each other or spoke on the phone on a daily basis. T. 107-08, 132-33, 134, 279, 477, 480, 1175; Exs. 41 at 410034.

34. Alleged Client No. 1 met with Respondent in his office at the Affiliated Group after her Monday night support group meeting on approximately six occasions during the months of November and December of 1992. These meetings lasted from five minutes to two hours. T. 107-08, 313. During November and December of 1992, Alleged Client No. 1 also met with Respondent on approximately four occasions either before or after her individual therapy sessions with Therapists No. 1 or 2. T. 125-26. In addition, on about two occasions, Alleged Client No. 1 met with Respondent before or after her son's therapy sessions with Therapist No. 1. T. 126. Respondent and Alleged

Client No. 1 would plan their meetings and Respondent would schedule her in on his calendar. T. 127, 479, 1231, 1337-44.

35. During their conversations in the Respondent's office that occurred before or after Alleged Client No. 1's individual or group sessions or her son's sessions, Alleged Client No. 1 and Respondent discussed issues that came up in both her individual and group therapy. T. 134-36, 1283. They discussed Alleged Client No. 1's memories of sexual abuse while she was a child and her feelings about that abuse. These topics were also the subject of discussion in her group sessions. Respondent asked Alleged Client No. 1 questions that encouraged her to provide additional information about what happened and her feelings about the incidents. Alleged Client No. 1 told Respondent that she had a difficult time relating to Therapist No. 2 and Respondent talked to Alleged Client No. 1 about his past and present interactions with Therapist No. 2, including the fact that he was attracted to Therapist No. 2 and felt that Therapist No. 2 was attracted to him. T. 107-13, 120-23, 126, 133. Respondent did not offer any options or make any suggestions to Alleged Client No. 1 about the difficulties she had in dealing with Therapist No. 2. T. 123. They also talked about their current life situation, including parenting issues, running, and things they were doing. T. 1229. Alleged Client No. 1 discussed her unhappiness with her marriage to Client No. 2. Respondent talked about his family, the type of family he came from, the dysfunction in his family, the current status of his family's dysfunction, the ways he was coping, the process of uncovering his feelings, his long-standing dissatisfaction with his marital situation, and his feelings about others. T. 283-86, 1177-79. The same topics were also discussed when Alleged Client No. 1 and Respondent had lunch together, ran together, or spoke on the telephone. T. 132-34.

36. Alleged Client No. 1 confided in Respondent about her sexual abuse and feelings because he was "very available, willing, caring, sensitive, genuinely present." Because he was a psychologist, she considered it safe to discuss these areas of her life with him. T. 131.

37. During discussions between Alleged Client No. 1 and the Respondent during November and December, 1992, the Respondent talked by name about Client No. 10 (a member of the group who had obtained family counseling from Respondent), Client No. 11 (who is Client No. 10's son), and Client 12 (another group member whose son was a client of the Respondent and who participated in family therapeutic meetings with Respondent). T. 113-19, 280. During the summer of 1993, Respondent told Alleged Client No. 1 certain information about Clients No. 5 and No. 6 in an attempt to parallel their situation with that of Alleged Client No. 1 and her husband. Respondent also revealed the names of Clients No. 5 and 6. T. 268-70, 280, 1288. In approximately August of 1993, Respondent told Alleged Client No. 1 of his attraction to Client No. 5 and the possibility that he would meet Client No. 5 in California. T. 270-71. Respondent also talked to Alleged Client No. 1 by name about another couple from Northfield who were clients of his. T. 281-82.

38. Respondent gave Alleged Client No. 1 the access code to his voice mail at work at some point. Alleged Client No. 1 thus potentially could listen to confidential

messages left by other Affiliated Group clients or messages left by other therapists about other clients. Alleged Client No. 1 frequently used the code to listen to Respondent's voice mail at work. She and Respondent communicated in large degree by his voice mail. On one occasion Alleged Client No. 1 listened to a message left on Respondent's voice mail by a person whose child was a client of Respondent. T. 153-54, 257-58. Respondent gave Alleged Client No. 1 a cartoon relating to their communicating through voice mail. T. 259-60; Ex. 48.

39. Alleged Client No. 1 discussed her individual therapy sessions with Therapist No. 4 with Respondent during telephone conversations and meetings in person, and while they were working out. Alleged Client No. 1 often called Respondent on his cell phone immediately after a therapy session to discuss the session. T. 295-98, 1225; see, e.g., Ex. 25 at 250002.

40. On December 5, 1992, a meeting was held at Respondent's home between Respondent, his wife, Alleged Client No. 1, and Client No. 2. The meeting was held because Respondent's wife was concerned about the relationship between Respondent and Alleged Client No. 1. During the meeting, Respondent said that he and Alleged Client No. 1 were just friends. T. 641-42.

41. In approximately mid-December 1992, Respondent and Alleged Client No. 1 met at a location close to Alleged Client No. 1's home and then drove to The Lexington restaurant for dinner. T. 233-234, 448. During dinner, the feet of Alleged Client No. 1 and Respondent were intermingled. On the way home, Respondent asked for the first time if he could hold Alleged Client No. 1's hand. T. 235; Ex. 41 at 410034, 410105.

42. Respondent and Alleged Client No. 1 did not engage in any type of sexual contact during October, November, or December of 1992. T. 450-51. Respondent and Alleged Client No. 1 encouraged each other to work out everything that they could in their own marriages. T. 1184, 1187, 1191.

43. Alleged Client No. 1 shared information about her relationship with Respondent with Therapists 1 and 2 during the fall of 1992. T. 286-87. During the month of November, 1992, Alleged Client No. 1 told Therapist No. 2 that she was having an attraction to another man, but may not have identified him. T. 416, 427-28. On December 8, 1992, Alleged Client No. 1 told Therapist No. 2 that it was Respondent to whom she was attracted. T. 416. In approximately mid-December 1992, Therapist No. 2 noted that Alleged Client No. 1 was "emotionally involved" with Respondent. Ex. 3 at 300008.

44. During approximately December 1992 or January 1993, Therapist No. 2 told Alleged Client No. 1 that she viewed Respondent as a spider and Alleged Client No. 1 as a fly caught in his web. T. 298-99. Alleged Client No. 1 informed Respondent of this statement. T. 298; see Ex. 7 at 700024. Respondent said in response something in the nature of, "Oh, if that's what I am, that would be awful." T. 298.

45. Therapists No. 1 and No. 2 sought supervision after learning of Alleged Client No. 1's relationship with Respondent. Ex. 2 at 200021-22; Ex. 3 at 300008, Ex. 4 at 400007. Psychologists who were members of their consultation group advised them that Alleged Client No. 1 needed to be terminated from her individual and group therapy because in their view Client No. 1 was not safe in that office environment due to its proximity to Respondent's office. T. 781-82. As a result, Therapist No. 2 gave Alleged Client No. 1 notice on approximately December 15, 1992, that her individual and group therapy would be terminated as of approximately the end of January, 1993, because Respondent was a colleague of Therapist No. 2 and Therapist No. 2 thus had a conflict of interest and could no longer be objective in her therapy with Alleged Client No. 1. T. 286-88, 416, 427-28; Exs. 3 at 300008 and 4 at 400007.

46. During a business meeting of the therapists in the Affiliated Group that was held on or about January 14, 1993, Therapists No. 1, 2, 3, 5, and 6 had a discussion with Respondent concerning his relationship with Alleged Client No. 1 and the therapy he provided to her husband, Client No. 2. T. 146-53; Exs. 2 at 20022; 4 at 400008, 31 at 310001. During the meeting, the Respondent did not deny that he was meeting with Alleged Client No. 1 at the offices of the Affiliated Group or deny that he had a relationship with Alleged Client No. 1. He did deny that he had a sexual relationship with Alleged Client No. 1. T. 153; Exs. 2 at 20022, 4 at 400008, 31 at 310001. The therapists explained to Respondent their concerns about Respondent meeting with Alleged Client No. 1 in his office after her group therapy sessions, Respondent providing therapy to the husband of Alleged Client No. 1 even though he was a friend, conflicts of interest, and possible adverse effects on the therapy of Alleged Client No. 1. T. 148-53; Exs. 4 at 400008, 31 at 310001. The therapists told Respondent that his activities would be harmful to Alleged Client No. 1. Therapist No. 5 told Respondent that his meetings with Alleged Client No. 1 may be contaminating her therapy. T. 149, 151; Ex. 31 at 310001. In the view of Therapist No. 5, it was inappropriate for a client to discuss what occurred during therapy with another psychologist immediately after therapy, while the client was in a regressed child-like state. T. 151. The therapists requested that Respondent discontinue seeing Alleged Client No. 1 after therapy sessions or in his office in order to "clean up the boundaries" of Alleged Client No. 1's therapy. They advised him to see a therapist and tell his supervisor about his entire relationship with Alleged Client No. 1 and Client No. 2. Respondent agreed to do so. T. 148-52, 178-79,201; Exs. 2 at 200022, 4 at 400008, 31 at 310001, 66 (journal entry dated January 14, 1993).

47. Between January 14, 1993, and October 18, 1994, Therapist No. 5 consulted with Gary Schoener and Therapists No. 7, 8, and 9 concerning Respondent. T. 175-78.

48. Alleged Client No. 1 was terminated from individual and group therapy with Therapists No. 2 and No. 3, because of her meetings with Respondent after therapy sessions, her disclosure that she had strong feelings for Respondent, the dual relationship that existed between Respondent and Client No. 2, and the conflict of interest that arose because Respondent had an office in the same building as Therapists No. 2 and 3. Alleged Client No. 1's son, who was receiving therapy from

Therapist No. 1, was also terminated from therapy with Therapist No. 1. T. 287; Exs. 2 at 200022, 3 at 300008-11, 300015, 4 at 400006, 400008. Therapist No. 2 gave Alleged Client No. 1 the names of three other potential therapists, and she chose one. T. 287. As a result of her termination from individual and group therapy with Therapists No. 2 and No. 3, Alleged Client No. 1 felt "saddened," "humiliated," "hurt," "betrayed," and "ragingly angry" at Therapist No. 2 and Respondent. T. 288.

49. Alleged Client No. 1's last session with Therapist No. 2 was on February 1, 1993. Ex. 3 at 300012-13. Her group therapy with Therapists No. 2 and 3 ended sometime before January 14, 1993. Ex. 4 at 400008.

50. Respondent later told the therapists in the Affiliated Group that he had consulted with Therapist No. 10, who was supervising the Respondent in a practicum that he was doing for his doctoral studies at the time. T. 178-79. Therapist No. 10 did not see an ethical violation because Alleged Client No. 1 was not Respondent's client. Ex. 41 at 410120. Respondent does not remember if he spoke to Therapist No. 10 about his provision of therapy to Client No. 2. Ex. 41 at 410119-20.

51. On or about January 15, 1993, Respondent, his wife, Alleged Client No. 1, and Client No. 2 went on a ski trip together to a resort in Utah. During the trip, Respondent and Alleged Client No. 1 held hands. T. 451, 495, 633.

52. Prior to the ski trip, Respondent and his wife met with Alleged Client No. 1 and Client No. 2 at a restaurant to discuss whether they should even go on the trip. Client No. 2 did not feel comfortable about the relationship between Respondent and Alleged Client No. 1. T. 515, 636.

53. On approximately January 20, 1993, Alleged Client No. 1 began individual therapy with Therapist No. 4. T. 288, 500. Prior to meeting the first time with Therapist No. 4, Alleged Client No. 1 told her that she was not Respondent's client. T. 501. Alleged Client No. 1 was still seeing Therapist No. 4 as of the date of the hearing in this matter in 1999. T. 293-94.

54. On January 25, 1993, Respondent began therapy with Therapist No. 15. He continued therapy with Therapist No. 15 until April 17, 1995. T. 1313-14; Ex. 55.

55. On February 11, 1993, during a business meeting at the Affiliated Group, Respondent reported that he had followed through sharing information with his supervisor, Therapist No. 10, and that he would be beginning therapy. Exs. 2 at 200023, 4 at 400009, 31 at 310003.

56. In March of 1993, Respondent told Therapist No. 5 the name of his therapist and reported that he had set up weekly therapy sessions. He also told Therapist No. 5 that he had also talked to his current supervisor about the dual relationship issues. T. 201-02.

57. In approximately March 1993, Respondent and his wife separated. T. 288, 524, 1231. They became divorced later in 1993. T. 1136.

58. At some point during their therapy sessions, Therapist No. 4 told Alleged Client No. 1 that Respondent was using her and revictimizing her, and pointed out the similarities between Respondent and the brother who had abused her as a child. T. 294-95. Alleged Client No. 1 told Respondent of these comments. Respondent again responded by saying things like, "Oh, if that's true, that would be awful" or "I hope I wouldn't do something like that." T. 295-97. Therapist No. 12 also told Alleged Client No. 1 that she was reenacting the abuse situation in her relationship with Respondent, and stressed the similarities in the age differences, power imbalance, and personality types between Respondent and the brother of Alleged Client No. 1. Alleged Client No. 1 also told Respondent of these comments. He responded by saying that he would never intend to hurt her like that or, if he was hurting her like that, he was so sorry. T. 351, 353-55.

59. Alleged Client No. 1 and the Respondent first kissed and engaged in intimate touching while they were in the Respondent's office during an evening in March, 1993. T. 492-95.

60. Beginning on approximately April 2, 1993, Client No. 2 began individual and marital counseling with Therapist No. 12. T. 659; Ex. 50.

61. On or about April 20, 1993, Alleged Client No. 1 and Client No. 2 separated, primarily due to Alleged Client No. 1's attraction to Respondent. T. 289-91, 524.

62. In May of 1993, Alleged Client No. 1 promised her husband, Client No. 2, and their marriage counselor, Therapist No. 12, that she would end her relationship with Respondent as of July 1, 1993. T. 516, 660.

63. Alleged Client No. 1 and Respondent first engaged in sexual intercourse on approximately June 17, 1993. T. 291, 1226.

64. On or about June 22, 1993, Alleged Client No. 1's parents sent a letter to Respondent and his colleagues at the Affiliated Group. In the letter they expressed deep concern for what they believed was Respondent's improper involvement with their daughter and the negative effects of that relationship on Alleged Client No. 1, her husband, and their children. The other therapists in the Affiliated Group recommended that Respondent seek legal counsel. T. 179, 1181; see Ex. 2 at 200023, 200025, 4 at 400009, 400011.

65. Respondent and Alleged Client No. 1 made numerous attempts to end their relationship. Approximately 75% of the time, Alleged Client No. 1 initiated the contacts to get the relationship started again after they had agreed to end it. T. 534-35; see Exs. 7 at 700075; 8 at 800032 (Alleged Client No. 1 noted in her journal entry dated February 28, 1993, that she "will try hard this week not to pursue" Respondent and honor his decision if he "keeps the distance" and stated in her journal entry dated April 30, 1993, that Respondent "does not actively pursue" her and that she has "been hot on the pursuit").

66. After July 1, 1993, the relationship between Alleged Client No. 1 and Respondent continued, but became secretive. T. 520. During late June and early July of 1993, Respondent and Alleged Client No. 1 traveled together to Florida. They also spent two days in Cambridge, Minnesota, and at a lake resort during August of 1993. T. 525-26, 1226.

67. In early August, 1993, Respondent gave Alleged Client No. 1 a birthday card on which he wrote "from your psychologist" on the envelope, labeled a figure on the card "psychologist," and wrote inside the card, "Actually I'm not really your psychologist (just in case the Board ever got ahold of this card)." T. 334-37; Ex. 27. Respondent gave Alleged Client No. 1 this card in an attempt to lighten Alleged Client No. 1's reaction to her parents' letter. T. 1181-82.

68. The last occasion on which Respondent and Alleged Client No. 1 engaged in sexual intercourse was on approximately September 21, 1993. T. 291. The Respondent and Alleged Client No. 1 had their last face-to-face meeting on October 31, 1993. They had approximately five telephone conversations between October 31 and the first week of December, 1993. T. 291-92, 1236.

69. Alleged Client No. 1 and Client No. 2 reconciled in September, 1993. T. 660.

70. Alleged Client No. 1 continued to call Respondent's voice mail to retrieve any messages Respondent had left for her until late 1993. See Ex. 55 (entries for 12/2/93 and 12/9/93).

71. On January 5, 1994, Alleged Client No. 1 filed a complaint with the Board concerning Respondent. In her complaint, she indicated that she was not Respondent's client. T. 507-10. Moreover, in a January 20, 1994, complaint to the Board, Therapist No. 4 stated that, while technically Alleged Client No. 1 was not Respondent's client, he violated an important boundary by seeing her husband for professional services. T. 506; Ex. 114. Respondent does not believe that he was providing psychological services to Alleged Client No. 1. T. 1174, 1238. Thus, neither Respondent nor Alleged Client No. 1 considered themselves to be in a therapist/client relationship during 1992 through early 1994, nor did Therapist No. 4 view them in that fashion.

72. On or about September 30, 1994, Therapist No. 5 received a letter from an attorney representing Alleged Client No. 1 and Client No. 2 that stated that Alleged Client No. 1's relationship with Respondent was sexual. In that letter, counsel for Alleged Client No. 1 contended that it was improper for Respondent to have an affair "with his client's wife." T. 155-56, 511; Ex. 100. As a result of the letter, Therapist No. 5 informed Respondent on October 3, 1994, that she wanted him to leave the building. She also informed Respondent that she no longer wanted to continue her business relationship with him and would no longer refer clients to him. Therapist No. 5 was concerned that the allegations against Respondent would affect her reputation in the community. T. 155-56, 161; Ex. 31 at 310008, 310013.

73. On approximately October 3, 1994, Respondent agreed to leave the Affiliated Group. Ex. 31 at 31008, 31003.

74. Alleged Client No. 1's relationship with Respondent severely affected her marital relationship and made it necessary for her and her husband to work extensively at rebuilding trust and a healthy relationship. It also made her very cynical about the mental health profession and required her to spend much time rebuilding trust with two psychologists. T. 355-58.

75. Because of Respondent's relationship with his wife, Client No. 2 was thereafter reluctant to seek psychological services from another provider. T. 605-06.

76. Respondent retained a drawing that Client No. 2 had made during a therapy session but did not write progress notes of his treatment sessions with Client No. 2 during October or November of 1992. When Client No. 2 authorized the release of his records to Therapist No. 12 on or about September 29, 1993, Respondent realized that he had not written any records relating to Client No. 2 and wrote notes relating to Client No. 2 for the first time. The notes reflected Respondent's best recollection concerning what they had talked about in therapy. Although the sessions occurred in 1992, the dates on Respondent's session notes with Client No. 2 erroneously referred to "1993." T. 1241-42, 1318; Ex. 115.

77. In spring 1994, when contacted by an attorney representing Alleged Client No. 1 and Client No. 2, Respondent realized that the initial notes he had written were erroneously dated "1993." Respondent then re-wrote his notes for Client No. 2's treatment sessions, altering the year to "1992." T. 1242-43.

78. Respondent provided the notes for Client No. 2 that were dated "1993" to the Committee in response to its investigation subpoena. Respondent did not provide his entire file relating to Client No. 2 to the Committee as requested. Exhibit 115 (offered by Respondent during the hearing) contains documents not previously produced to the Committee, including a drawing made by Client No. 2. T. 615-617; Exs. 30, 115. The failure to provide these documents to the Committee was due to an inadvertent oversight by counsel for Respondent. T. 22-24, 1241.

79. Respondent's records relating to Client No. 2 consist of a slip bearing Client No. 2's name, the name of his insurance company, his diagnosis, the dates that he received therapy, and an indication whether he had paid his co-payment on each of those dates; a collection information form from the person that handled Respondent's billing stating Client No. 2's name and address, the dates of the therapy, and financial and co-payment information; a client data form that has Client No. 2's name and address, telephone numbers, birth date, signature, and diagnosis; a release form signed by Client No. 2 to release the contents of his file to Therapist No. 12; a drawing that Client No. 2 drew during his second session with Respondent; three pages of therapy notes relating to Client No. 2; and a message slip for Respondent informing him that Client No. 2 would be picking up a copy of his records. T. 1239-40; Ex. 115.

80. Alleged Client No. 1 did not have any scheduled therapy sessions with Respondent. She did not receive any bills from him for services provided nor, to her knowledge, did her insurance company. Respondent did not give her a diagnosis of her condition or give her a treatment plan. He did not administer a Minnesota Multiphasic Personality Inventory (MMPI) test to her or take notes during their discussions. Most of the testing that needed to be done in the Affiliated Group was referred to Respondent, and Respondent did tell Alleged Client No. 1 at some time prior to January 15, 1993, that she could take an MMPI or Rorschach ink blot test through him. T. 469, 474, 542-43, 563-64.

Client No. 3

81. Client No. 3 and her husband (who is now the pastor of Church No. 3) were friends and social acquaintances of Respondent and Kristi Carlson from approximately 1972 to the early 1990's. T. 675, 716-17, 1248-49.

82. Individuals who attended Church No. 3 sometimes participated in "Home Group" meetings sponsored by the church. "Home Groups" were generally comprised of eight to twelve people. They met once a week with a leader in small group settings (usually the leader's home) for the purpose of fellowship, prayer time, and Bible study. The meetings generally included worship music, prayers, a discussion of the topic that was being studied, and times for social interaction. T. 676, 688, 690, 697, 701-04, 709, 711, 739, 1251. Members of Home Groups would often help others and be approached by others requesting their assistance. T. 690, 700.

83. The primary responsibilities of a Home Group leader were to (1) oversee the leadership of home group meetings by leading worship and prayer (or arranging for others to do so), teaching from or about God's word, establishing outreach, arranging for fellowship, and establishing priorities; and (2) draw out the spiritual gifts and abilities of home group members by engaging in one-to-one or couple-to-couple relationships with them, praying regularly for the members of the group, acting as a "spiritual covering" over members and their families, encouraging the use of the members' spiritual gifts, and preparing other members to be Home Group leaders. T. 720-21, 728; Ex. 35.

84. Home Group leaders would also meet with members individually to discuss personal problems, such as relational issues in their families or in the church, frustrations, anxieties, and similar life experiences. T. 731. Home Group leaders were not expected to provide therapy or meet weekly over a period of months or years with one individual member to discuss personal problems. T. 742-43.

85. Home Group leaders were not expected to engage in "deep counseling" of members of the Home Group but rather were expected to restrict their counseling to more practical things, like family issues. If a member of a Home Group required "deep" counseling regarding personal issues, it was expected that the Home Group leader would talk to the pastor and the pastor would refer the person if there was something non-pastoral that they couldn't handle. T. 720.

86. From approximately 1983 or 1984 to June 1990, Respondent was a Home Group leader for Church No. 3. Kristi Carlson was a joint Home Group leader with Respondent. T. 741-42, 1251-52, 1278. Respondent had stopped being a Home Group leader by the time he became involved in the church-sponsored Hope Group in approximately late summer or early fall of 1990. T. 724-25.

87. Respondent met with some members of his Home Group on an individual basis in restaurants, their homes, or his home to discuss their individual issues and areas of concern. His discussions with them included spiritual counseling and referencing of Biblical verses. T. 1252-54.

88. At some point prior to approximately June, 1990, Client No. 3 and her husband were members of the Home Group led by the Respondent. T. 675-76, 705, 1251, 1258.

89. Client No. 3 eventually decided she wanted to get into therapy primarily to deal with issues of sexual, physical, and verbal abuse in her family of origin. She decided to approach Respondent because she knew he was a professional counselor, not because of Respondent's position as her former Home Group leader. She asked Respondent if he would be willing to see her for counseling, and Respondent said yes. T. 677-79.

90. Respondent was no longer the leader of Client No. 3's Home Group when she began her therapy with him. T. 677, 707.

91. When Client No. 3 asked Respondent what the counseling fees would be, Respondent said that it would be gratis. T. 677-79, 708. Respondent also told Client No. 3's husband that he would not charge for therapy with Client No. 3 because of their friendship. T. 719, 1259-61.

92. Client No. 3 initially saw Respondent in Respondent's home because he did not yet have an office. T. 679-80, 1256. Kristi Carlson and two of the Carlsons' young children (ages 6 months and 3 years) were present in the home during these meetings. T. 680-81, 1267-68. Client No. 3 gave Kristi permission to be present. T. 681. When Respondent acquired an office at the Affiliated Group in April of 1990, Client No. 3 started meeting with him in his office for counseling. T. 679, 1277.

93. Client No. 3's sessions with Respondent dealt with her own personal issues that she was working through. These issues involved both her family of origin and her current family. These sessions had nothing to do with Bible study or fellowship time in a Home Group setting. Respondent and Client No. 3 did not do any praying or Bible study during their sessions. T. 686-87, 713.

94. Respondent took notes at least during the initial sessions when Client No. 3 discussed family history. T. 682.

95. Respondent administered the MMPI to Client No. 3. T. 685. Respondent also gave Client No. 3 assignments to complete as part of her counseling, such as

preparing a family history, using lists of feelings to identify how she felt about different situations, and taking actions to celebrate life. T. 680, 683-84.

96. Client No. 3 saw Respondent for therapy for approximately 12 to 15 months, beginning in approximately 1989-1990. Her first meetings with Respondent in his home were held at weekly intervals for a one-hour period. This continued after Client No. 3 started seeing the Respondent in his office. After Client No. 3 went to weekly sessions for several months, there was a gradual reduction in the number of meetings until she stopped seeing Respondent. T. 681-82, 684-85; Ex. 119.

97. Respondent's 1989-90 calendar referenced Client No. 3 at various places by using one of four different identifiers (her first name only using its proper spelling and an alternate spelling, and her first name and last initial using its proper spelling and an alternate spelling). See T. 1327-1331. Client No. 3's name appears in Respondent's 1989-1990 calendar on the following dates: December 26, 1989; January 2, 9, 16, 23 and 30, 1990; February 20 and 27, 1990; March 2, 3, and 13, 1990; April 9, 17, 23, 29, and 30, 1990; May 22 and 29, 1990; June 12 and 26, 1990; July 3, 10, 17, 24, and 31, 1990; August 7, 21, and 28, 1990; September 18 and 24, 1990; October 1, 8, and 27, 1990; November 10 and 12, 1990; and December 4 and 18, 1990. Ex. 119; T. 1326-30.

98. Client No. 3 never filed a complaint with the Board of Psychology concerning the Respondent. T. 687.

Witness No. 4

99. Witness No. 4 is a married female. She and Respondent have known each other since they were teenagers. They attended the same church and attended camps together. T. 568, 583.

100. As of September 1990, Witness No. 4 and her family attended Church No. 3, the same church attended by Respondent and his family. T. 568-59, 572, 585.

101. In September 1990, Witness No. 4 began participating in the Hope Group at Church No. 3 because she wanted to begin to address issues relating to the domestic violence that had occurred in her family of origin. T. 569-70, 572, 585.

102. During the time that Witness No. 4 was involved in the Hope Group, Respondent invited her to have lunch with him. Witness No. 4 at first accepted the invitation, and later went back to Respondent and declined because she felt that her husband would be uncomfortable with it. Respondent told her that it was "all right if [she felt] too vulnerable right now." T. 574, 585-86.

103. In August 1991, Respondent gave Witness No. 4 a cassette tape of music by Amy Grant. He told her that whenever he listened to this, it reminded him of her. When Witness No. 4 opened up the cassette, she found that Respondent had highlighted the words to one of the songs on the tape entitled "I Will Remember You." Witness No. 4 later transcribed the words to the song. T. 574-76; Ex. 33.

104. A mutual attraction existed between Respondent and Witness No. 4 dating back to the 1970's, when they were in high school. Witness No. 4 was not aware that Respondent was attracted to her until her gave her the Amy Grant tape. T. 584, 586-87.

105. At a subsequent Hope Group meeting, Witness No. 4 asked Respondent if the highlighted song was the one that reminded him of her and Respondent replied that it was. T. 577-78. When Witness No. 4 stated that she considered the song very romantic, Respondent replied, "I know." Witness No. 4 told Respondent that she and her husband weren't close and she believed that Respondent and Kristi Carlson's relationship was not close at the time. She ended the conversation without saying what she would do. T. 578.

106. Witness No. 4 informed her husband and the pastor of Church No. 3 of Respondent's conduct towards her. T. 578-80, 722.

107. Witness No. 4's husband confronted Respondent about giving his wife the Amy Grant tape. Respondent agreed that he had "stepped way across the line." T. 578-80.

108. When the pastor of Church No. 3 confronted Respondent about his conduct towards Witness No. 4, Respondent admitted that he had "gone over the boundary" in expressing his feelings of attraction towards her and told the pastor he would not do it again. T. 722-23.

109. Respondent's conduct towards Witness No. 4 caused a crisis for her because her marriage was not going very well at the time. Her counselor recommended that she put Respondent on hold while she decided whether she wanted to stay with her marriage or not. T. 582, 722-24.

110. Witness No. 4 and her husband also sought guidance from the pastor of Church No. 3 regarding the incident with Respondent. The pastor agreed that Respondent's conduct was inappropriate and observed that the incident was a "major matter" in terms of its significance in Witness No. 4's marriage. T. 722-24.

111. As a result of Respondent's conduct towards her, Witness No. 4 quit attending the Hope Group after August 1991. She rejoined the group after Respondent was no longer involved in the group. T. 573, 580-81.

112. Witness No. 4 called Respondent at his office in September of 1991 to tell him good-bye. She told him that she felt it was better if they did not see each other any more because of their feelings toward one another, and that she wanted to try to keep her marriage intact. Respondent never called Witness No. 4 again, and she did not contact him again. T. 587.

Clients No. 5 and 6

113. Client No. 5 was a married female in June of 1993.

114. In June 1993, Client No. 5 and her husband, Client No. 6, began marital therapy with Respondent. T. 1207-08, 1354; Ex. 38 at 380011. Clients No. 5 and 6 met jointly with Respondent in their first session and some subsequent sessions. Although Respondent could identify only three joint sessions with Clients No. 5 and No. 6 from his records, he believes that there were further joint sessions about which he made no notes. T. 1366-69, 1374-75. Client No. 6 began attending a men's group in September, 1993. Client No. 5 and 6 thereafter had some individual sessions with Respondent and perhaps some joint sessions with him. T. 1207-08, 1366-70, 1372-74. Respondent met individually with Client No. 5 far more frequently than he met with Client No. 6. T. 1374-75.

115. At the beginning of Client No. 5's therapy with Respondent, she was completing an undergraduate degree. By the time she terminated therapy in April, 1995, Client No. 5 was a first-year graduate student working on a doctoral degree in psychology. She completed a doctorate in clinical psychology in October, 1998. T. 1210-11.

116. Client No. 5 continued in therapy with Respondent until April of 1995. T. 1207. Respondent provided psychological services to Client No. 6 from approximately June 1993 until February of 1995. Client No. 6 formally terminated therapy with Respondent by letter dated June 21, 1995. T. 1366-77; Exs. 36, 37, 38 at 380038-40.

117. Neither Respondent's treatment plan for Client No. 5 nor his treatment plan of Client No. 6 lists the improvement of their marital relationship as a "goal." T. 1354-55, 1362-64; Ex. 38 at 30007.

118. Transference is a common phenomenon in therapy which may involve a client transferring his or her feelings about family members or early life experiences onto someone else. A client who is experiencing transference may feel attracted or "connected" to his or her therapist, or may dislike the therapist. T. 1027, 1387-88. Psychologists who recognize that transference is occurring have an obligation to attempt to use the client's response in a therapeutic way. If it is not feasible to do so and the transference is interfering with the therapy, then the psychologist has an obligation to either limit the scope of the therapy or transfer the client into some situation where the therapy may be beneficial. T. 1027-28.

119. Transference is generally present if the client acknowledges it. If the client denies that transference is occurring, that is not sufficient to rule out the fact that transference may be present, and further inquiry is necessary. T. 887. Transference does not automatically end at the termination of a psychological service. Terhune Affidavit, April 14, 1999, at 7.

120. Transference is first documented in Respondent's notes relating to Client No. 5 that bear the date of September 13, 1995. Respondent's notes indicate as follows: "Transference issues—similar to [redacted]? We discussed her feelings about me. I said that is normal for [clients] to have strong feelings for their [therapist].

Plan: discuss further." Ex. 38 at 380014. Based upon the Respondent's billing records (Exs. 36, 38), the testimony of Client No. 5 that the therapy relationship ended in April, 1995 (T. 1207), and the fact that this entry was sandwiched between entries dated August 18, 1994, and January 26, 1995 (see Ex. 38 at 380014), it appears that the date of this session was actually September 13, 1994.

121. In his notes relating to the January 26, 1995, session with Client No. 5, Respondent documented that there had been"[m]ore [discussion] about attraction." Ex. 38 at 380014.

122. During Client No. 5's next three sessions with Respondent on February 10, 1995, February 23, 1995, and March 3, 1995, Client No. 5 apparently discussed dreams that she had had involving Respondent. Ex. 38 at 380015.

123. During a therapy session on March 10, 1995, Client No. 5 expressed that she was "[t]orn about staying or leaving [Client No. 6]" and "[l]ooking for some help as to how to do this." Ex. 38 at 380016. Respondent's records also indicate that Client No. 5 was experiencing "high levels of transference with me to a point where [redacted] & her have discussed her becoming my friend, and she would like this. [Client No. 6] has even suggested she and I get involved with each other. [Redacted] asked my reaction: I got her wish first, which she said is for us to become friends, and even deeper fantasy is that we eventually become partners. My response then was: (1) Never leave one relationship for another. (2) "I like you, we certainly connect in our conversation, but I am treating my responses to you as solely countertransference." Given her education background I knew she would know what I meant by that term. (3) You have a lot to look into yourself that is represented as me in your dream." Ex. 38 at 380016; T. 1390, 1401.

124. After the March 10, 1995 session, Respondent sought consultation with Therapist No. 15 and two other individuals regarding the transference issue with Client No. 5. Respondent's notes do not reveal what information Respondent provided to his consultants about Client No. 5 or himself. Each of the three told Respondent that he "must work this through with [Client No. 5] as transference, very strong transference." As a result of the consultation, Respondent documented a plan which included, "I will not talk about her's [sic] and my relationship except to discuss the transference. This includes not talking about a potential relationship for us." T. 1393, 1395; Ex. 38 at 380017.

125. Respondent's notes for Client No. 5's March 18, 1995, session indicate that "[Client No. 5 is] looking at moving out. Trying separation." The notes indicate that Respondent further discussed transference with Client No. 5 and said that it would be good to deal with this. He also told Client No. 5 of his "discomfort [with] [redacted's] statement about seeing us [together] & the 'niceness' about this." T. 1395; Ex. 38 at 380017. Respondent's notes for that date indicate that Client No. 5 described a dream in which the desk between Respondent and Client No. 5 was chopped up and they were able to talk without the hindrance of the desk. Ex. 38 at 380017.

126. On March 22, 1995, Respondent's note for a two-hour session with Client No. 5 states in part that she was "struggling whether or not to separate, divorce . . . [Client No. 5] wants a man she doesn't feel so suffocated by. . . . Briefly alluded to disc. [redacted] transference [with] me. Her friend [redacted] doesn't think it is transference but that she just needs a man like me. My response – I told her she needs to focus on all that is happening now [with] [Client No. 6], kids, and the woman trying to emerge in her and not look to future relationships with men." During this session, Respondent lent Client No. 5 a book entitled "The Good Divorce," which talks about how persons who opt to divorce can make it a less painful process. T. 1397-99; Ex. 38 at 380018.

127. During the next session with Client No. 5 on March 31, 1995, Respondent noted that he gave Client No. 5 a couple of books on divorce and also suggested that Client No. 5 read the book "Divorce Busters," which tries to prevent divorce, in an effort to encourage Client No. 5 to continue to work on her marriage. T. 1397-98, Ex. 38 at 380018. Although Respondent's billing records do not reflect that he charged Client No. 5 for the March 31 session, it is likely that Client No. 5 paid out of pocket for that session. T. 1396; Ex. 38 at 380002, 380005.

128. In his note dated March 31, 1995, Respondent indicated that Client No. 6 was concerned that Respondent "may not be objective [with] her [Client No. 5] because of her attraction to me." Ex. 38 at 380018; T. 1397.

129. In his notes dated March 31, 1995, Respondent listed three options or a combination of options for continued discussion with Client No. 5. The third option states "end therapy if [Client No. 5] finds it too difficult to be a part of it with me because of her strong feelings about me. Ended session without discussion on this." T. 1401-02, Ex. 38 at 380018.

130. On April 3, 1995, Therapist No. 15 urged Respondent to seek regular supervision. Respondent was in supervision at that time. T. 1316; Ex. 55. Respondent's therapy records with Therapist No. 15 show that when he quit therapy with her in mid-April 1995, she did not believe he had completed working through his relationship issues. T. 1315; Ex. 55. Although Respondent told Therapist No. 15 he intended to enter group therapy in a mixed group (see Ex. 55, April 17, 1995, entry), he failed to do so. T. 1315.

131. Respondent provided documents numbered 380019-20, including notes dated April 1, 1995, and April 6, 1996 (at 380019-20), to the Attorney General's Office in response to a subpoena served on Respondent. See Ex. 38. Respondent represented these to be Client No. 5's treatment records.

132. After the conclusion of the contested case hearing in March 1999, Respondent provided the Administrative Law Judge with a file folder containing Respondent's original records relating to Client No. 5, in order to enable the Judge to clarify dates that were illegible on the copies that had been received during the hearing as Exhibit 38. Upon reviewing the original records, the Judge noted that there were two

separate versions of the pages containing the termination summary relating to Client No. 5. The version that referred to an April 1, 1995, session and an April 6, 1996, termination summary had already been included in Exhibit 38. The version that referred to an April 5, 1995, session and an April 6, 1995, termination summary had not been included in Exhibit 38 and had not been previously introduced as an exhibit in the proceeding. The Judge marked the latter two-page document as Exhibit 38A, provided copies to counsel for both parties, and indicated that she intended to receive the document as an exhibit absent objection by the parties. See letter to counsel dated March 18, 1999. Neither party objected. It appears that Exhibit 38A was not previously provided to the Committee during its investigation or in response to its discovery requests in the contested case proceeding.

133. The content of the note dated April 1, 1995 (at Ex. 38: 380019) is identical in content to the note dated April 5, 1995 (at Exhibit 38A) except that the final sentence of the April 1, 1995, note reads "NT: discuss termination" and the final sentence of the April 5, 1995, note reads "We also processed her termination." Both notes begin by stating "Divorce issues, definitely leaving [Client No. 6] . . . ." Exs. 38 at 380019, 38A.

134. Respondent's note dated April 6, 1996, at Ex. 38: 380019-20 is identical in content to the note dated April 6, 1995, in Exhibit 38A with the following exceptions:

(a) The April 6, 1996, note states that "[T]hey both agree that they are radically different than each other but [Client No. 6] is sad about it as is [Client No. 5]," while the April 6, 1995, note states that "[T]hey both agree that they are radically different than each other but [Client No. 6] is especially sad about it."

(b) The April 6, 1996, note states that "Since [Client No. 5] has come to this decision, she and I decided that her mental health process with a therapist is complete," while the April 6, 1995, note states that "Since [Client No. 5] has come to this decision, and most of our therapy has been related to the process of making this decision, she and I decided that her mental health process with a therapist is complete."

(c) The final sentence of Respondent's note dated April 6, 1996, simply states: "I told [Client No. 5] that if she needed any future referrals for whatever not to hesitate to give me a call." This sentence is not contained in the note dated April 6, 1995. The latter note ends with the following sentences, which are omitted from the April 6, 1996, note:

> Our termination today, because we have finished our work, implys [sic] that we will never be in a therapist client relationship again, and if she so needs further work she will be referred by myself to another therapist. When [Client No. 5] asked me about being friends now that we have officially terminated, my response was to

> say that "time has a way of making things all right." Obviously I implied that at some point in time (unknown right now) we most likely could move from our current psychological status of client-therapist to friends, as well as since [Client No. 5] is studying psychology in a Psy.D. program, we may even possibly be colleagues at some point in time.

135. Respondent stated in both versions of the termination summary relating to Client No. 5 that he and Client No. 5 "acknowledge[d] the difficulties of her and I developing a friendship, which we both admitted would have satisfying elements to it. We acknowledged that I cannot pursue her in any way as a friend." Exs. 38 at 380019, 38A. The apparent discussion that occurred between Client No. 5 and Respondent during their last session about a friendship being mutually satisfying is inconsistent with the plan formulated by Respondent's consultants and set forth in his note of March 10, 1995, that he would not talk about a potential relationship with Client No. 5. T. 1407-08; Ex. 38 at 380016-17.

136. Respondent did not request reimbursement from Client No. 5's insurance company for the one-hour session on March 18, 1995, the two-hour session on March 22, 1995, or the entire two-hour session on April 5, 1995. Respondent did request insurance reimbursement for one hour of the April 5 session. Ex. 38 at 380005. Ex. 38 at 380002 notes, "3/18/95-PD 95, 3/22/95-PD 190, and 4/5/95-PD 95," apparently reflecting that Client No. 5 provided her own payment for the March 18 and 22 sessions and for one hour of the April 5 session. T. 1407; Ex. 28 at 380002.

137. The dates on Respondent's billing records relating to Clients No. 5 and 6 do not in all instances match the dates on the Respondent's progress notes. Respondent's billing records indicate Respondent conducted individual therapy sessions with Client No. 5 on November 26, 1993, March 17, 1994, February 24, 1995, and March 2, 1995. Ex. 38 at 380004-05. Respondent's progress notes indicate the dates for these sessions were November 25, 1993, March 18, 1994, February 23, 1995, and March 3, 1995 (emphasis added). Ex. 38 at 380014-15. Respondent's billing records also indicate Respondent conducted an individual therapy session with Client No. 6 on August 24, 1993. Ex. 38 at 380003. Respondent's progress notes indicate the date of this session as August 25, 1993 (emphasis added). Ex. 38 at 380012.

138. Respondent's therapy notes for Client No. 5 do not reflect any discussion concerning her option of deferring the decision to separate from her husband until she had worked through her transference issues or feelings of attraction for Respondent. His notes also do not reflect any discussion with Client No. 5 of the option of ending therapy with Respondent if she found it too difficult to continue because of her strong feelings about him. T. 1401-04; Ex. 38 at 380018. He did, however, urge Client No. 5 to focus on all that was happening then with Client No. 6, her children, and the woman trying to emerge in her, and not look to future relationships with men. T. 1404; Ex. 38 at 380018.

139. Client No. 5 and Client No. 6 separated in approximately April of 1995. Their divorce was finalized at some point during approximately 1995. Respondent's Deposition at 8, 16.

140. Respondent's professional relationship with Client No. 5 ended on or about April 5, 1995. T. 1321; Exs. 36, 38, 38A.

141. Client No. 5 approached Respondent to borrow some books in approximately May or June, 1995. T. 1321.

142. On June 21, 1995, Client No. 6 sent a letter to Respondent formally requesting termination of services. In the letter, Client No. 6 noted that Respondent's experiences of marital discord and divorce during his early psychological education were "strikingly similar" to those of Client No. 6 and his wife, Client No. 5 and should have been divulged when he and Client No. 5 first came to see Respondent. Client No. 6 stated that in light of this, he felt it was "nearly impossible" for Respondent to have maintained the objectivity Client No. 6 expected in the therapeutic relationship. Client No. 6 also stated that because of Respondent's relationship to Client No. 5, he felt it was no longer appropriate for him to seek Respondent's counsel. Ex. 38 at 380038-40; see T. 1375-79.

143. Respondent responded to the letter from Client No. 6 in a letter dated July 3, 1995. In his letter, Respondent acknowledged the intent of Client No. 6 to terminate therapy and offered to provide him with a referral. T. 1380.

144. Respondent became physically intimate with Client No. 5 in early 1996 and first had sexual intercourse with her in approximately February 1996. T. 1321.

145. There is no evidence to suggest that Respondent sought consultation before engaging in a sexual relationship with Client No. 5.

146. At the time of the hearing, Respondent and Client No. 5 lived together in the same home and were involved in a romantic relationship. T. 1208, 1281. This relationship commenced after Client No. 5's therapy was completed, but within two years of the completion of therapy. T. 1281-82.

Additional Findings

147. On April 16, 1996, during an interview with Investigator Renstrom, Respondent told her that he had discarded his journals. T. 793-794. The individual who was Respondent's attorney at that time also informed the investigators that the journals had been destroyed. T. 793, 1454. Respondent believed that the journals were contained in boxes of belongings that he had discarded in the years following his 1993 separation from his former wife. T. 1452.

148. Respondent did not recall whether he made any attempt to locate his journals when asked to produce them by Investigator Renstrom in March 1996 or in

response to the discovery requests made by the Complaint Resolution Committee of the Minnesota Board of Psychology in May 1998. T. 1453-55.

149. Respondent located his journals at some point within the year or two preceding the hearing in this matter. T. 1452. Respondent did not disclose the existence of his journals to the Committee until shortly before the hearing commenced. T. 1457. The Board issued a subpoena for the production of the journals. The Respondent objected, and the Committee sought enforcement of the subpoena in District Court. The Court eventually ruled that the journals were not privileged and had to be turned over to the Committee. Ex. 53. The journals were received in the contested case proceeding over the Respondent's objection. Respondent was allowed an opportunity to review the journals and then, if necessary, request that the hearing be reconvened for further testimony by Respondent or other witnesses concerning the journals. T. 1414-30. After review, Respondent did not request an opportunity to provide testimony relating to the journals.

150. In his journals, Respondent discusses his awareness of personal issues that could be expected to impair his objectivity. In several entries, Respondent indicates his attraction to women who are experiencing some emotional pain:

> "I can see these women in even a small way admiring me, identifying with me, looking for me to satisfy some need – and here I am seeking to meet the need – but really whose need do I seek to meet? Mine or others?" (1/26/91)
>
> "She looked to me like she had experienced some pain in her life and I was attracted to this. Why am I attracted to people with pain?" (8/29/92)
>
> "Am I a perpetrator? Or am I a victim?…Is my need to be loved so great that I cannot see beyond the tip of my narcissistic nose?…She has tapped me where I am most vulnerable, in my need to be admired to be listened to, and admired. I am weak-kneed to the admiration of a beautiful and bright and hurting woman." (11/2/92)
>
> "Is it friendship, innocent and respectful, or am I a perpetrator who has trapped a vulnerable person in my web of personal need?" (1/14/93)
>
> "There is some dynamic that occurs when get certain need met that are needs born in old wounds, and I must deal with the wound directly and not continue to anesthetize the pain by looking for women to want me, to view me as someone who can help them, someone who can take their pain away." (8/8/93)
>
> "I feel like a …perpetrator. A seductive, manipulative, selfish perpetrator! I have had boundary problems with friends and colleagues, but I have never played mind games with anyone." (8/30/93)

"Sometimes I think my best friends are my clients because they open up so much to me." (10/19/93)

"I simply don't have good boundaries." (8/22/94)

"Why can't I live without a woman on my mind?" (4/18/94)

"Ethically I am way underdeveloped . . . ." (6/15/94)

151. Before initiating this contested case proceeding concerning complaints about Respondent's practice, the Complaint Resolution Committee asked Respondent to respond to its concerns regarding Alleged Client No. 1, Witness No. 4, and Clients No. 2, 5, and 6. He did so both in writing and at a conference before the Complaint Resolution Committee on July 26, 1996. Exs. 41 at 410054-65, 410070-73, 410074-88, 410089, 410090-178. When the parties were unable to resolve the matter, the Complaint Resolution Committee initiated the present contested case proceeding on or about May 7, 1998.

152. On January 18, 1999, the Complaint Resolution Committee filed a motion for summary disposition. On February 16, 1999, the Administrative Law Judge granted this motion in part. The Judge concluded that Respondent had failed to maintain accurate records for Clients No. 2, 5, and 6 in violation of Minn. R. 7200.4900, subp. 1a; had a dual relationship with Client No. 2 and thus provided psychological services to a client when his objectivity or effectiveness was impaired, in violation of Minn. R. 7200.4810; and had engaged in a sexual relationship with Client No. 5 within two years of the termination of his last professional contact with her, in violation of Minn. R. 7200.4900, subp. 8. The Administrative Law Judge recommended that disciplinary action be taken against Respondent's license due to these violations. The Judge indicated that a detailed analysis of the facts and reasons for the summary disposition decision would be included in the Report issued after the hearing. See Letter to Counsel dated February 16, 1999.

153. At the commencement of the contested case hearing in this matter, Respondent's counsel moved for reconsideration of the Court's decision regarding the failure to maintain accurate records for Client No. 2. The Administrative Law Judge took the motion to reconsider under advisement and permitted the introduction of evidence regarding maintenance of the records of Client No. 2. T. 22-25.

154. During the hearing, the parties stipulated that the Complaint Resolution Committee no longer alleges and will not prove or argue that Hope Group was group therapy or that a client relationship existed with any of the clients 1, 3 and 4 listed in the Notice of and Order for Hearing by virtue of their participation in Hope Group. The Committee announced its intention to introduce evidence of client relationships between the Respondent and Alleged Clients No. 1 and Client No. 3 unrelated to their participation in Hope Group. The parties also agreed that the Notice of and Order for Hearing would be amended after the trial to conform to the proof and to the stipulation. T. 383-91, 523.

155. After the hearing, the parties agreed that the Committee would be permitted to serve and file a supplemental affidavit by its expert witness, Dr. Scott Terhune, addressing matters raised by newly discovered evidence, and that Respondent would have an opportunity to serve and file any response within one week of receiving Dr. Terhune's affidavit. See Letter to Administrative Law Judge from Counsel for the Committee dated April 5, 1999. The Committee in fact filed a supplemental affidavit of Dr. Terhune on April 15, 1999. The Respondent did not file a response.

156. On April 29, 1999, the Committee filed a post-hearing motion to amend the Notice of and Order for Hearing to conform to the evidence. In the motion, the Committee sought to amend the Notice of and Order for Hearing to allege that (1) Respondent provided an altered record of Client No. 5's termination summary in response to the Board's subpoena which omitted information contained in a subsequently discovered record that shows Respondent and Client No. 5 were contemplating a continuing relationship; (2) Respondent was untruthful when he told the Committee in July of 1996 that he had not engaged in a sexual relationship with Client No. 5; and (3) Respondent was untruthful when he said that his personal journals had been destroyed. The Committee sought to allege that Respondent had engaged in unprofessional conduct in violation of Minn. Stat. § 148.941, subd. 2(a)(3) and Minn. R. 7200.5700, had failed to cooperate with an investigation under Minn. Stat. § 148.941, subd. 2(a)(4), had engaged in conduct that reflects adversely on fitness under Minn. Stat. § 148.941, subd. 2(a)(4), had engaged in conduct likely to deceive or defraud under Minn. Stat. § 148.941, subd. 2(a)(2) and Minn. R. 7200.5600, and had violated the Rules of Conduct set forth in Minn. R. 7200.4900, subps. 5, 6, and 9 relating to conflict between psychologist and client, termination of services, and coordinating services with other professionals. The Respondent filed a Memorandum in Opposition to the Motion on May 14, 1999. The motion was granted by the Administrative Law Judge on May 24, 1999, and another hearing day was scheduled to enable Respondent to respond to the Committee's additional allegations. By letter dated June 15, 1999, the Committee informed the Administrative Law Judge that it had decided to withdraw its amendments in the interest of avoiding additional expense and delay. The Committee agreed that this matter should proceed pursuant to the Committee's original Notice of Hearing, with the exception as stated at the hearing that the Committee would not argue that Respondent provided psychological services to any of the clients named in the Notice of Hearing by reason of his involvement in the Hope Group. The Respondent did not interpose any objection to this approach.

157. There is no evidence that Respondent discussed with Clients No. 2, 3, 5, or 6 the impact his impaired objectivity could have on their therapy, or that he offered to terminate their therapy or assist them in obtaining other therapy.

158. Respondent attended a "boundaries" workshop in 1994, a workshop on ethics taught by Mr. Schoener in 1996, and a workshop on accountability and mental health practice in approximately 1996. T. 1127, 1130-31.

159. The mere fact that someone has completed therapy is not sufficient to show that rehabilitation has been accomplished. An independent assessment is necessary to show that rehabilitation has been accomplished. The personal and sexual behavior of a psychologist outside the workplace is relevant for purposes of assessment and journals are sometimes examined as part of an assessment. T. 920-21, 942-43.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS OF LAW

1. The Board of Psychology and the Administrative Law Judge have jurisdiction of this matter pursuant to Minn. Stat. § 148.941 and Minn. Stat. § 14.50.

2. The Board of Psychology has authority to take disciplinary action against licensed psychologists, including Respondent, under Minn. Stat. § 148.941.

3. The Committee gave proper notice of the hearing in this matter and has fulfilled all relevant substantive and procedural requirements of law and rules.

4. The Committee has the burden of proof in this proceeding and must establish the facts at issue by a preponderance of the evidence as provided by Minn. R. 1400.7300, subp. 5 (1999), and Minn. Stat. § 148.941, subd. 2 (1998).

5. Minn. Stat. § 148.941, subd. 2(a) (1998), provides in pertinent part that the Board of Psychology may impose disciplinary action against a "licensee whom the Board, by a preponderance of the evidence, determines:

> (1) has violated a statute, rule, or order that the [B]oard issued or is empowered to enforce;
>
> (2) has engaged in fraudulent, deceptive, or dishonest conduct, whether or not the conduct relates to the practice of psychology, that adversely affects the person's ability or fitness to practice psychology;
>
> (3) has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established; [or]

*** * ***

(8) has failed to cooperate with an investigation of the [B]oard as required under subdivision 4 . . . .

6. Minn. Stat. § 148.89, subd. 2a (1998), defines the term "client" as follows:

> "Client" means each person . . . that receives, received, or should have received, or arranged for another entity to receive services from a person regulated under sections 148.88 to 148.98. For the purposes of sections 148.88 to 148.98, "client" may include patient, resident, counselee, evaluatee, and, as limited in the rules of conduct, student, supervisee, or research subject. In the case of dual clients, the psychologist must be aware of the responsibilities to each client, and of the potential for divergent interests of each client.

The rules promulgated by the Board of Psychology also include a definition of the term "client." Minn. R. 7200.0100, subp. 3a (1999), defines "client" to mean "an individual or entity who is the recipient of any of the psychological services described in Minnesota Statutes, section 148.89, subdivision 5." Minn. Stat. § 148.89, subd. 5 (1998), in turn provides that the "practice of psychology" means "the observation, description, evaluation, interpretation, and modification of human behavior by the application of psychological principles, methods, and procedures, to prevent or eliminate symptomatic, maladaptive, or undesired behavior and to enhance interpersonal relationships, work and life adjustment, personal and organizational effectiveness, behavioral health, and mental health." That statutory provision goes on to specify that "[t]he practice of psychology includes, but is not limited to, the following services, regardless of whether the provider receives payment for the services:

> (1) psychological research, psychological testing, teaching of psychology, and the evaluation or assessment of personal characteristics such as intelligence, personality, abilities, interests, aptitudes, and neuropsychological functioning;
>
> (2) counseling, psychoanalysis, psychotherapy, hypnosis, biofeedback, and diagnosis and treatment of:
>
> (i) mental and emotional disorder or disability;
>
> (ii) alcoholism and substance abuse;
>
> (iii) disorders of habit or conduct;
>
> (iv) the psychological aspects of physical illness or condition, accident, injury, or disability;
>
> (v) bereavement issues;
>
> (vi) family or relationship issues; and

(vii) work-related issues; and

(3) psychoeducation evaluation, therapy, remediation, and consultation.

7. Minn. R. 7200.0100, subp. 5a (1999), defines "dual relationship" to mean "a relationship between a psychologist and a client that is both professional and one or more of the following: cohabitational, familial, or supervisory, or that includes significant personal involvement or financial involvement other than legitimate payment for psychological services rendered."

8. Minn. R. 7200.0100, subp. 7 (1999), defines "private information" to mean "any information, including client records, revealed during a professional relationship between a psychologist and a client."

9. Minn. R. 7200.0100, subp. 8 (1999), defines "professional relationship" to mean "the relationship between a psychologist and a client."

10. Minn. Stat. § 148.98 (1998) requires the Board to adopt rules of conduct to govern a licensee's practices or behavior. Those rules of conduct are set forth in Minn. R. 7200.4500-7200.5700 (1999). The rules of conduct promulgated by the Board "constitute the standards against which the professional conduct of a psychologist is measured" and a violation of the rules of conduct "constitutes unprofessional or unethical conduct and is a sufficient reason for disciplinary action or denial of licensure." Minn. R. 7200.4500, subps. 2 and 3 (1999). Although the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association is to be "used as an aid in resolving any ambiguity which may arise in the interpretation of the rules of conduct," the rules of conduct promulgated by the Minnesota Board of Psychology shall prevail in the event of a conflict between the rules of conduct and the ethical principles. Minn. R. 7200.4500, subp. 4 (1999).

11. Minn. R. 7200.4700, subp. 1 (1999), requires that psychologists "safeguard the private information obtained in the course of practice, teaching, or research" and that private information be disclosed to others "only with the informed written consent of the client," with certain exceptions applicable to minor clients, office staff, information required by law or court order, records germane to Board disciplinary proceedings, and where disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another individual. See Minn. R. 7200.4700, subps. 2, 4, 5, 10, and 12 (1999).

12. Minn. R. 7200.4810, subp. 1 (1999), provides that "[a] psychologist must not provide psychological services to a client or potential client when the psychologist's objectivity or effectiveness is impaired." Subpart 2 of the same rule provision specifies as follows:

A psychologist's objectivity or effectiveness is impaired whenever:

A. the psychologist has a dual relationship with a client;

B. the psychologist misuses the relationship with a client due to a relationship with another individual or entity; [or]

* * *

E. the psychologist exploits the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit.

Subpart 3 provides that, "[w]henever a psychologist's objectivity or effectiveness becomes impaired during a professional relationship with a client, the psychologist must notify the client orally and in writing that the psychologist can no longer see the client professionally and must assist the client in obtaining services from another professional."

13. Minn. R. 7200.4900, subp. 1a (1999), specifies that "[a] psychologist must maintain an accurate record for each client. Each record must minimally contain: A. an accurate chronological listing of all client visits, together with fees charged to the client or a third-party payer; B. copies of all correspondence relevant to the client; C. a client personal data sheet; and D. copies of all client authorizations for release of information and any other legal forms pertaining to the client."

14. Minn. R. 7200.4900, subp. 4 (1999), provides that "[a] psychologist shall disclose to the client preferences of the psychologist for choice of treatment or outcome and shall present other options for the consideration or choice of the client."

15. Minn. R. 7200.4900, subp. 7 (1999), specifies that "[a] psychologist shall make a prompt and appropriate referral of the client to another professional when requested to do so by the client."

16. Minn. R. 7200.4900, subp. 7a (1999), provides that "[a] psychologist must not exploit in any manner the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit."

17. Minn. R. 7200.4900, subp. 8 (1999), provides as follows:

> A psychologist shall not engage in sexual intercourse or other physical intimacies with a client, nor in any verbal or physical behavior which is sexually seductive or sexually demeaning to the client. Physical intimacies include handling of the breasts, genital areas, buttocks, or thighs of either sex by either the psychologist or the client. A psychologist must not engage in sexual intercourse or other physical intimacies with a former client for a period of two years following the date of the last professional contact with the client, whether or not the psychologist has formally terminated the professional relationship.

18. Minn. R. 7200.5600 (1999), provides that "[a] psychologist must not engage in any conduct likely to deceive or defraud the public or the board."

19. Minn. R. 7200.5700 (1999) provides that "[a] psychologist must not engage in any unprofessional conduct. Unprofessional conduct is any conduct violating parts 7200.4600 to 7200.5600 or violating those standards of professional behavior that have become established by consensus of the expert opinion of psychologists as reasonably necessary for the protection of the public interest."

20. The Committee has not proven by a preponderance of the evidence that Respondent provided "psychological services," as defined in Minn. Stat. § 148.89, subd. 5 (1998), to Alleged Client No. 1, or that Alleged Client No. 1 was a "client" within the meaning of Minn. Stat. § 148.89, subd. 2a (1998) or Minn. R 7200.0100, subd. 3a (1999). Accordingly, the Committee has not proven by a preponderance of the evidence that Respondent engaged in an improper dual relationship with Alleged Client No. 1, exploited the therapeutic relationship for his own benefit, provided psychological services when the psychologist's objectivity or effectiveness was impaired, or engaged in physical intimacies with a former client within two years of the last professional contact. The Committee has, however, proven by a preponderance of the evidence that Respondent engaged in unprofessional conduct in violation of Minn. R. 7200.5700 (1999) and Minn. Stat. § 148.941, subd. 2(a)(3) (1998), with respect to Alleged Client No. 1 by engaging in on-going and detailed discussions of her therapy and thereby interfering with her therapy. In addition, the Committee has proven that Respondent talked to Alleged Client No. 1 by name about other clients and provided her with the access code to his voice mail at work and thereby failed to safeguard private information about other clients, in violation of Minn. R. 7200.4700, subp. 1 (1999).

21. The Committee has proven by a preponderance of the evidence that Respondent provided psychological services to Clients 2, 3, 5, and 6, and they are "clients" within the definition of Minn. Stat. § 148.89, subd. 2a (1998), and Minn. R. 7200.0100, subp. 3a (1999).

22. With respect to Client No. 2, summary disposition was properly entered prior to the hearing on the Committee's claim that Respondent provided psychological services to Client No. 2 when his objectivity or effectiveness was impaired by virtue of a dual relationship, in violation of Minn. R. 7200.4810, subps. 1 and 2 (1999). The Committee has proven by a preponderance of the evidence that Respondent engaged in unprofessional conduct with respect to Client No. 2 by engaging in a sexual relationship with the wife of Client No. 2 in close proximity to the end of the professional relationship with Client No. 2. Upon reconsideration of the summary disposition ruling concerning the records kept with respect to Client No. 2, the Administrative Law Judge concludes that the Committee has proven by a preponderance of the evidence that Respondent failed to maintain accurate and complete therapy records with respect to Client No. 2, engaged in deceptive conduct with respect to those records, attempted to mislead the Board investigator by making false statements or representations with respect to the therapy records of Client No. 2, and failed to cooperate with an investigation by the Board in violation of Minn. R. 7200.4900, subp. 1a(A) and

7200.5600 (1999), and Minn. Stat. § 148.941, subd. 2(a)(2) (1998). In this regard, Respondent failed to maintain an accurate chronological listing of all client visits, created therapy records for Client No. 2 approximately ten months after he terminated therapy; misled Client No. 2 as to when the therapy notes had been written; rewrote his notes when he realized that the first set of notes had been erroneously dated; failed to clearly indicate when the notes were written; and attempted to mislead Board investigators by telling them that the therapy notes relating to Client No. 2 had been written within a month of the termination of therapy. All of these violations of the Rules of Conduct constitute unprofessional conduct pursuant to Minn. R. 7200.4500, subp. 3 (1999). The Committee has not proven by a preponderance of the evidence that Respondent exploited his professional relationship with Client No. 2 for Respondent's own emotional, financial, sexual, or personal advantage or benefit within the meaning of Minn. R. 7200.4810, subp. 2(E) (1999); engaged in deceptive conduct within the meaning of Minn. R. 7200.5600 (1999) by failing to disclose his impaired objectivity; or failed to disclose client preferences for treatment or present options within the meaning of Minn. R. 7200.4900, subp. 4 (1999).

23. With respect to Client No. 3, the Committee has proven by a preponderance of the evidence that Respondent provided her with psychological services while his objectivity was impaired by a dual relationship, in violation of Minn. R. 7200.4810, subps. 1-2, and that Respondent did not notify Client No. 3 orally and in writing that he could no longer see her professionally or assist her in obtaining services from another professional, in violation of Minn. R. 7200.4810, subp. 3 (1999). The Committee has also proven by a preponderance of the evidence that Respondent failed to maintain accurate and complete records with respect to Client No. 3, in violation of Minn. R. 7200.4900, subp. 1a (1999). Accordingly, Respondent engaged in unprofessional conduct with respect to Client No. 3, in violation of Minn. Stat. § 148.941, subd. 2(a)(3) (1998) and Minn. R. 7200.5700 (1999). The Committee did not prove violations of Minn. R. 7200.4900, subp. 4 or 7a (1999). In addition, because the Notice of and Order for Hearing did not provide notice that the Committee was asserting violations of Minn. Stat. § 148.907, subd. 2(5) (1998), or Minn. R. 7200.4900, subps. 5 and 6 (1999), these provisions are not properly at issue in this proceeding.

24. The Committee has not established any violation of statute or rule with respect to Witness No. 4.

25. With respect to Client No. 5, the Committee has proven by a preponderance of the evidence that Respondent failed to maintain an accurate chronological listing of all client visits, in violation of Minn. R. 7200.4900, subp. 1a (1999); engaged in a sexual relationship within two years of the last professional contact, in violation of Minn. R. 7200.4900, subp. 8 (1999); provided therapy while his objectivity was impaired by a dual relationship in violation of Minn. R. 7200.4810, subps. 1-2 (1999), and failed to notify Client No. 5 orally and in writing that he could no longer see her professionally or assist her in obtaining services from another professional, in violation of Minn. R. 7200.4810, subp. 3 (1999); exploited the professional relationship for his own emotional, financial, sexual, or personal advantage in violation of Minn. R. 7200.4810, subp. 2(E) and 7200.4900, subp. 7a (1999); and engaged in unprofessional

conduct by virtue of these violations and also because he failed to properly manage the transference of Client No. 5 and his loss of objectivity and failed to seek supervision before engaging in a sexual relationship, in violation of Minn. R. 7200.5700 (1999) and Minn. Stat. § 148.941, subd. 2(a)(3) (1998). The Committee did not establish by a preponderance of the evidence that Respondent engaged in deceptive conduct within the meaning of Minn. R. 7200.5600 (1999) by maintaining two versions of two session notes or that he failed to disclose client preferences for treatment or present options within the meaning of Minn. R. 7200.4900, subp. 4 (1999).

26. With respect to Client No. 6, the Committee has proven by a preponderance of the evidence that Respondent provided therapy while his objectivity was impaired by a dual relationship in violation of Minn. R. 7200.4810, subps. 1-2 (1999), and failed to notify Client No. 6 orally and in writing that he could no longer see him professionally or assist him in obtaining services from another professional, in violation of Minn. R. 7200.4810, subp. 3 (1999); failed to maintain an accurate chronological listing of all client visits, in violation of Minn. R. 7200.4900, subp. 1a (1999); and engaged in unprofessional conduct by virtue of these violations and by having a sexual relationship with his wife within close proximity to the termination of his therapeutic relationship, in violation of Minn. R. 7200.5700 (1999) and Minn. Stat. § 148.941, subd. 2(a)(3) (1998). The Committee did not establish by a preponderance of the evidence that Respondent exploited the professional relationship with Client No. 6 for his own emotional, financial, sexual, or personal advantage in violation of Minn. R. 7200.4810, subp. 2(E) and 7200.4900, subp. 7a (1999); engaged in deceptive conduct within the meaning of Minn. R. 7200.5600 (1999) by failing to disclose his impaired objectivity or that he failed to disclose client preferences for treatment or present options within the meaning of Minn. R. 7200.4900, subp. 4 (1999).

27. Based upon the above Conclusions, the Committee has proven by a preponderance of the evidence that Respondent violated statutes and rules that the Board has issued or is empowered to enforce and that discipline of Respondent's license is warranted pursuant to Minn. Stat. § 148.941, subd. 2(a)(1) (1998), and Minn. R. 7200.4500, subp. 3 (1999).

28. Respondent did not respond honestly during the Committee's investigation concerning the nature of his relationship with Client No. 5. His therapy records relating to Client No. 5 contained two versions of her termination summary and identified different treatment dates. He told the Committee that he believed his journals had been destroyed, later learned of their existence within "the year or two" preceding the hearing, and failed to produce them to the Committee until shortly before the commencement of the hearing. However, these matters are not properly relied upon as a basis for the imposition of discipline against Respondent's license since they were not alleged in the original Notice of and Order for Hearing and the Committee withdrew the amendments seeking to assert these claims and elected to rely solely on the original Notice of and Order for Hearing in this matter.

29. The Administrative Law Judge's Recommendation on the Complaint Resolution Committee's Motion for Summary Disposition dated February 16, 1999, is hereby incorporated by reference and made a part of this order.

30. Citation to exhibits or testimony in the foregoing Findings of Fact does not mean that all testimony or exhibits that support the Findings have been cited.

31. Any of the foregoing Findings of Fact that are more appropriately considered Conclusions of Law are hereby adopted as such. In addition, any Conclusion more properly termed a Finding of Fact is hereby adopted as such.

32. These Conclusions are made for the reasons set forth in the Memorandum which follows. The Memorandum is incorporated herein by reference.

Based on the foregoing Conclusions, the Administrative Judge hereby makes the following:

RECOMMENDATION

IT IS HEREBY RESPECTFULLY RECOMMENDED that the Minnesota Board of Psychology take disciplinary action against Respondent's psychology license.

_____

BARBARA L. NEILSON
Administrative Law Judge

Dated: September 17, 1999

Reported: Transcript Prepared by Gail M. Hinrichs and Julie A. Rixe, Court Reporters, Shaddix & Associates

MEMORANDUM

This contested case proceeding involved numerous allegations of wrongdoing relating to six different individuals. The allegations relating to each of the individuals will be discussed in the remainder of this Memorandum, along with a consideration of whether the Complaint Resolution Committee has established by a preponderance of the evidence that violations of applicable statutes and rules governing the practice of psychology in Minnesota occurred with respect to these individuals.

The Memorandum will discuss where relevant the opinions of the two expert witnesses who testified in this matter. The Complaint Resolution Committee's expert was Scott Terhune, Ph.D., L.P., and Respondent's expert was Gary Schoener, L.P. Dr. Terhune is a licensed psychologist who has a doctorate in psychology. He has been licensed as a psychologist since 1990. In addition to his clinical practice, Dr. Terhune has taught professional ethics at the Minnesota School of Professional Psychology. He has also served on the Minnesota Psychological Ethics Committee and has been the chair of that committee since January, 1995. Mr. Schoener is a licensed psychologist who has finished the course work necessary for a Ph.D., but has not completed his dissertation. He has been licensed as a psychologist since 1974. He is executive director of the Walk-In Counseling Center, a general psychotherapy practice, and also engages in private practice as a forensic psychologist and organizational consultant. He has authored or co-authored books or chapters of books relating to psychotherapists' sexual involvement with clients and professional boundaries. He provides training in the area of professional boundaries and consults on cases involving the issue of alleged boundary violations. He also has been a consultant for the Minnesota Board of Psychology and has served on the Board's Public Advisory Committee.

Alleged Client No. 1:

The Complaint Resolution Committee alleges that Alleged Client No. 1 received psychological services from Respondent on an on-going basis during their personal relationship that began on or about October 30, 1992. Accordingly, the Committee asserts that Alleged Client No. 1 was a "client" of Respondent. To support this assertion, the Committee argues that Alleged Client No. 1 regarded Respondent as an additional therapist; Respondent gave her a greeting card labeling himself as her psychologist (although disclaiming the label "if the Board ever gets ahold of this"); Alleged Client No. 1 discussed with Respondent in detail issues that she was dealing with in therapy when she stopped by Respondent's office after her group therapy on approximately six occasions in November and December of 1992, and also discussed these issues when she spoke to him on the phone, met him for lunch, and went running with him; Respondent provided written comments to Alleged Client No. 1 concerning her journal entries that were designed to help her develop insight and awareness; and Respondent spoke to Alleged Client No. 1 about psychological testing at some point, although he did not conduct any testing with her. The Committee contends that Respondent's detailed discussions with Alleged Client No. 1 of the issues and dynamics that she discussed with her other therapists, his assistance in helping her analyze her reactions and drawing her out, and his attempts to challenge the advice she received from other therapists criticizing his involvement amounted to the provision of psychological services to Alleged Client No. 1. The Committee's view was supported by the opinion of the Committee's expert, Dr. Scott Terhune.[2]

In response, Respondent argues that Alleged Client No. 1 was not, in fact, Respondent's client. Respondent emphasized that he did not consider Alleged Client No. 1 to be his client and he did not follow with respect to Alleged Client No. 1 any of the procedures he would typically follow when providing psychological services to a client, such as intake and gathering of insurance information, completion of a client data form, discussion of confidentiality and exceptions thereto, review of the client's prior counseling experience, diagnostic assessment, or explanation of the process and cost of therapy. Dr. Terhune agreed that these factors are often present when psychologists provide services to clients.[3] Moreover, Respondent points out that Alleged Client No. 1 stated in her initial complaint to the Board in 1994 that she was not Respondent's client, and only changed her position after being contacted by the Committee to supply an affidavit in support of the Committee's Motion for Summary Disposition. Client No. 2 (the husband of Alleged Client No. 1) also testified that he did not consider Alleged Client No. 1 to be Respondent's client.

A psychologist who gives advice, validates and provides support, and actively listens to a friend is not providing psychological services, according to Respondent's expert, Mr. Schoener.[4] Mr. Schoener further pointed out that there are no well-established standards defining what limitations should be placed upon psychologists conversing with friends and providing feedback about therapy topics. Mr. Schoener

indicated that meeting with a friend and giving feedback and support is not a violation of the Code of Conduct.[5]

The Administrative Law Judge is not persuaded that Respondent was providing psychological services to Alleged Client No. 1 or that she was a "client" of Respondent within the meaning of the applicable statute or rule. Consistent with this opinion, it appears that the communications between Alleged Client No. 1 and Respondent were primarily the result of their friendship and deepening involvement with each other. Alleged Client No. 1 and Respondent had been friends and social acquaintances for approximately five years prior to the fall of 1992. Respondent, Alleged Client No. 1, and their respective spouses had attended the same church, gone to dinner together, skied together, swam together, and trained for races together. When the couples went skiing at Indianhead in approximately February 1991, long before the events of the fall of 1992, Respondent and Alleged Client No. 1 stayed up late talking, and there is some evidence that Alleged Client No. 1 first felt that she was "drawn" to the Respondent at that time.[6] Viewed in the context of this preexisting friendship, it is not unusual that Respondent and Alleged Client No. 1 would talk to each other about what was going on in their lives or that Alleged Client No. 1 would seek Respondent out as a friend after she completed a therapy session with therapists whose offices were in the same facility as Respondent.

While Alleged Client No. 1 may have been more inclined to discuss her therapy issues with Respondent because he was a psychologist by training and Respondent may have used certain listening and questioning skills that he had honed as a psychologist during his conversations with Alleged Client No. 1, there is no convincing evidence that Alleged Client No. 1 received psychological services from Respondent.[7] The type of information exchanged by Respondent and Alleged Client No. 1 is not unusual in the context of a close friendship or blossoming romantic relationship. Although Alleged Client No. 1 volunteered information about her therapy and Respondent was attentive and attempted to validate her emotions and draw out her feelings, there is no evidence that Respondent made any suggestions to her regarding how to handle or respond to her therapy.[8] It is understandable, given their mutual attraction and deepening personal relationship after late October of 1992, that Alleged Client No. 1 would divulge information about her therapy and Respondent would react with compassion. Moreover, the conversations between Alleged Client No. 1 and Respondent in his office during the fall and early winter of 1992 were limited in number and apparently did not occur after January 15, 1993, since Alleged Client No. 1 was not allowed to be on the premises of the building after that time apart from a couple of sessions that she had scheduled there. This requirement was communicated to Respondent at the January meeting, and he told Alleged Client No. 1 about it.[9] Alleged Client No. 1 had both individual and group therapists at the time her personal relationship with Respondent began to intensify. As Mr. Schoener testified, that fact "suggests at least that she knew what therapy was and she was getting it from someone else."[10] It also is significant that Alleged Client No. 1 did not assert that she was a client of Respondent's until shortly before the commencement of the hearing in this matter.[11]

The Committee attached a great deal of significance to a greeting card that Respondent gave Alleged Client No. 1 in August of 1993 (Ex. 27). In the card, Respondent labeled himself as Alleged Client No. 1's psychologist. The Committee's expert, Dr. Terhune, testified that the greeting card indicates that Respondent was attempting to facilitate in the eyes of Alleged Client No. 1 that there was a psychologist-client relationship.[12] The Administrative Law Judge does not view this card as containing a tacit admission by Respondent that there was a therapist/client relationship, but rather credits the testimony provided by Respondent that this card reflected a humorous attempt to lighten the reaction of Alleged Client No. 1 to a letter sent by her parents to the therapists in the Affiliated Group. In addition, the Committee asserted that Respondent's attempt to draw parallels between the situations of Clients No. 1 and No. 2 and Clients No. 5 and No. 6 constituted a recognized therapeutic technique to use the examples of other individuals to bring about some change in the behavior of Alleged Client No. 1 and provided further evidence of a therapist/client relationship.[13] In light of the close friendship and social relationship between Respondent and Alleged Client No. 1, however, the Administrative Law Judge is more inclined to view Respondent's discussion of other clients merely as a situation in which he shared the intimate details of his work with a significant other.

Accordingly, for all of these reasons, the Administrative Law Judge has concluded that the Committee has not shown by a preponderance of the evidence that Alleged Client No. 1 was, in fact, a client of Respondent. Thus, there can be no showing that Respondent engaged in an improper dual relationship with Alleged Client No. 1, exploited the therapeutic relationship for his own benefit, provided psychological services when the psychologist's objectivity or effectiveness was impaired, or engaged in physical intimacies with a former client within two years of the last professional contact. These rule provisions apply only where a "client" or "potential client" is involved. The term "potential client" is not defined in the rules promulgated by the Board of Psychology or in the governing statute. However, it does not appear in any case that Alleged Client No. 1 was a "potential client" of Respondent. She approached him out of friendship at a time when she already had individual and group therapists; there has been no convincing showing that she approached him in an effort to seek psychological services. Respondent clearly did not view her as a potential client. Moreover, due to her friendship with the Respondent, she properly should not have been considered a potential client. Because the Minnesota rule provisions are not ambiguous, there is no need to resort to the Ethical Principles of Psychologists and Code of Conduct published by the American Psychological Association.

However, it has been determined that the Respondent did, in fact, engage in unprofessional conduct with respect to Alleged Client No. 1. Pursuant to Minn. R. 7200.5700, "[a] psychologist must not engage in any unprofessional conduct," which is defined as conduct violating Minn. R. 7200.4600 to 7200.5600 or, in the alternative, "violating those standards of professional behavior that have become established by consensus of the expert opinion of psychologists as reasonably necessary for the protection of the public interest." Minn. Stat. § 148.941, subd. 2 (3) (1998) authorize the Board to impose disciplinary action against a licensee who has "engaged in unprofessional conduct or any other conduct which has the potential for causing harm to

the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established."

Both expert witnesses agreed that Respondent's on-going and detailed discussions of the therapy of Alleged Client No. 1 were inappropriate. Although the Committee's expert, Dr. Terhune, emphasized that he has not specifically assessed Alleged Client No. 1 to determine whether she was harmed by Respondent's conduct, in his opinion, based upon the testimony of Client No. 1, Respondent's conduct posed a risk that Alleged Client No. 1 would have to be in therapy for a lengthier period of time and would suffer additional stress because of increased difficulties in her marriage. In addition, Dr. Terhune testified that the information processed between Respondent and Alleged Client No. 1 outside of her group therapy posed a risk of interfering with and undermining her group process because some of the issues could or should have been brought up in the group, including interactions with other group members and therapists that would have been better processed within the group.[14] Respondent's discussion with Alleged Client No. 1 about his belief that Therapist No. 2 was attracted to him also may have interfered with Alleged Client No. 1's group therapy as it increased the risk of Alleged Client No. 1 discounting feedback from Therapist No. 2 and/or setting up a competition between them for Respondent's attentions.[15] Dr. Terhune also testified that, because Alleged Client No. 1 met with Respondent in his office immediately after her group therapy, there was a risk that Alleged Client No. 1 would view those interactions with Respondent as extensions of her group therapy, would not have the same opportunity to deal with her issues within the group, and would have a "diluted" group experience.[16] Respondent's attempts to minimize his contacts with Alleged Client No. 1 were not convincing in light of his admissions that he previously told Investigator Renstrom that Alleged Client No. 1 would come into his office for "10 to 15 minutes" after group and they would talk about "what she was dealing with in therapy."

Mr. Schoener also agreed that Respondent should have set limits about Alleged Client No. 1 coming to see him right after her therapy and that it was not appropriate for Respondent to engage in on-going, lengthy, and extensive discussions of the therapy of Alleged Client No. 1.[17] He pointed out that most therapists would be troubled if they knew that their client had a long chat with another psychologist after therapy and stated that such discussions could damage the psychologist's professional relationship with a colleague plus interfere with the individual's therapy.[18] Mr. Schoener also pointed out that, because Respondent and Alleged Client No. 1 met in Respondent's office, there was a greater risk that Alleged Client No. 1's other therapist (who had an office in the same suite of offices) would be concerned about possible interference with her therapy and there was a greater likelihood that friction would be created in the office.[19] Mr. Schoener conceded that Respondent used bad judgment in managing the boundaries of his relationship with Alleged Client No. 1. If Respondent interfered with the therapy of Alleged Client No. 1, Mr. Schoener agreed that that would be unprofessional conduct.[20]

Neither the current therapist of Alleged Client No. 1 nor any other therapist who had examined Alleged Client No. 1 offered a specific opinion concerning what impact the relationship between Alleged Client No. 1 and Respondent had upon the therapy of Alleged Client No. However, based upon the record as a whole, it appears likely that

Respondent's conduct in fact caused interference with the therapy of Alleged Client No. 1. Alleged Client No. 1 testified in a straightforward and credible fashion about the detrimental impact of Respondent's conduct upon her therapy and upon her marriage. The impact is most clearly seen in the need for her to terminate both group and individual therapy with members of the Affiliated Group in January, 1993, due to her relationship and discussions with Respondent. In addition, it is evident that Respondent's discussions of the therapy issues of Alleged Client No. 1 increased her confusion and created doubt in her mind about certain points that were raised by her therapists. It is likely that Respondent's conduct caused Alleged Client No. 1 to undergo therapy for a lengthier period of time and brought about additional stress because of increased difficulties in her marriage.

Indeed, Respondent himself admitted to Investigator Renstrom that the fact that he saw Alleged Client No. 1 after group, discussed therapy issues with her, and engaged in a relationship with her had a negative impact on Alleged Client No. 1's therapy. Respondent acknowledged that this conduct "confused things for her. Her therapy and feelings for me got muddled together. Her termination was detrimental. It was an additional stress someone shouldn't have to go through. I suspect it would have an impact on her trust in going to another psychologist."[21] In his interview with Investigator Renstrom, Respondent said that he had not realized that his discussions with Alleged Client No. 1 regarding her therapy had an adverse impact on her therapy until the therapists at the Affiliated Group confronted him on or about January 14, 1993. He later told Investigator Renstrom, "I should have seen it [earlier]."[22] During the hearing, Respondent acknowledged that his relationship with Alleged Client No. 1 after October 20, 1992, "created a certain dynamic for her that set off some circumstances that ultimately ended up in disrupting her therapy."[23] Respondent acknowledged that anyone who has been in therapy would be emotionally vulnerable after a session.[24]

The Administrative Law Judge thus finds that Respondent's frequent and detailed discussions of Alleged Client No. 1's therapy issues did, in fact, interfere with the therapy of Alleged Client No. 1. Accordingly, the Administrative Law Judge finds that Respondent engaged in unprofessional conduct with respect to Client No. 1, in violation of Minn. Stat. § 148.941, subd. 2(a)(3) (1998), and Minn. R. 7200.5700 (1999).

Finally, it is also evident that Respondent violated Minn. R. 7200.4700, subp. 1 (1999), with respect to Alleged Client No. 1. That rule requires that psychologists "safeguard the private information obtained in the course of practice, teaching, or research" and that private information be disclosed to others "only with the informed written consent of the client," with certain exceptions applicable to minor clients, office staff, information required by law or court order, records germane to Board disciplinary proceedings, and where disclosure is necessary to protect against a clear and substantial risk of imminent serious harm being inflicted by the client on the client or another individual.[25] The term "private information" is defined in Minn. R. Minn. R. 7200.0100, subp. 7 (1999), to mean "any information, including client records, revealed during a professional relationship between a psychologist and a client."

Alleged Client No. 1 provided credible testimony that, during discussions between Alleged Client No. 1 and the Respondent during November and December, 1992, the Respondent talked by name about an individual who was a member of her group and had obtained family counseling from Respondent, that individual's son (who also received therapy from Respondent), and another group member whose son was a client of Respondent and who participated in family therapeutic meetings with Respondent. In addition, during the summer of 1993, Respondent revealed the names of Clients No. 5 and 6 to Alleged Client No. 1 and told her certain information about Clients' No. 5 and No. 6 in an attempt to parallel their situation with that of Alleged Client No. 1 and her husband. In approximately August of 1993, Respondent told Alleged Client No. 1 of his attraction to Client No. 5 and the possibility that he would meet Client No. 5 in California. Respondent also talked to Alleged Client No. 1 by name about another couple from Northfield who was a client of his.

It is undisputed that Respondent gave Alleged Client No. 1 the access code to his voice mail at work at some point, and that Alleged Client No. 1 frequently used the code to listen to Respondent's voice mail at work in order to retrieve the messages that Respondent left for her on that voice mail. Alleged Client No. 1 thus potentially could listen to confidential messages left by other Affiliated Group clients or messages left by other therapists about other clients. In fact, on one occasion, Alleged Client No. 1 recalls that she listened to a message left on Respondent's voice mail by a person whose child was a client of Respondent.

Respondent admitted to Investigator Renstrom that Alleged Client No. 1 had access to his office voice mail in order to retrieve the messages Respondent left for her on that voice mail.[26] Respondent also admitted that he had disclosed the names of Clients No. 5 and 6 to Alleged Client No. 1 and agreed that that was not appropriate.[27] He did not deny divulging private information about the other individuals mentioned by Alleged Client No. 1 in her hearing testimony. Both expert witnesses agreed that it was inappropriate and a violation of the rules promulgated by the Board for Respondent to mention the names of clients to Alleged Client No. 1. Accordingly, a violation of Minn. R. 7200.4700, subp. 1, has been found.

Client No. 2:

Despite the fact that Dr. Carlson and Client No. 2 (the husband of Alleged Client No. 1) had been social acquaintances since 1987, Dr. Carlson agreed to provide therapy to Client No. 2 in late 1992. The therapy was in the nature of grief counseling. Respondent saw Client No. 2 on three occasions between October 29 and November 12, 1992. On November 12, 1992, Client No. 2 terminated the counseling relationship. Although Client No. 2 testified that he terminated counseling because he felt uncomfortable with the relationship that he perceived was taking place between Respondent and his wife, there is no evidence that he told Respondent that. He merely informed Respondent that he no longer wished to see Respondent for psychological services and did not feel comfortable going to him for therapy. Respondent assumed that there was not a need for further therapy sessions. He did not conduct a closure

session with Client No. 2 or refer Client No. 2 to another therapist for any further services.

Prior to the hearing, by letter dated February 16, 1999, the Administrative Law Judge notified counsel that she had determined that the Committee was entitled to partial summary disposition with respect to its claim that Dr. Carlson provided psychological services to Client No. 2 when his objectivity or effectiveness was impaired by virtue of a dual relationship, in violation of Minn. R. 7200.4810 (1999). Subpart 1 of Minn. R. 7200.4810 states that "[a] psychologist must not provide psychological services to a client or potential client when the psychologist's objectivity or effectiveness is impaired." Subpart 2 further provides that "[a] psychologist's objectivity or effectiveness is impaired whenever . . . the psychologist has a dual relationship with a client . . . ." The term "dual relationship" is defined in Minn. R. 7200.0100, subp. 5a, to mean "a relationship between a psychologist and a client that is both professional and one or more of the following: cohabitational, familial, or supervisory, or that includes significant personal involvement or financial involvement other than legitimate payment for psychological services rendered." The parties to this case and their experts agree that a friendship relationship falls within this definition. Minn. R. 7200.4810 sets forth a presumption that the psychologist's objectivity or effectiveness will in all cases be impaired if the psychologist has a dual relationship with a client, and expressly prohibits the provision of psychological services to one with whom the psychologist has a dual relationship.[28] For these reasons, summary disposition was entered with respect to the Board's allegation that Dr. Carlson violated Minn. R. 7200.4810 by virtue of his dual relationship with Client No. 2. The Respondent did not move for reconsideration of this ruling, and the Administrative Law Judge remains convinced after hearing the case that this decision is appropriate.

It is evident that Respondent also violated Minn. R. 7200.4810, subp. 3 (1999), by failing to disclose his impaired objectivity to Client No. 2. However, the Administrative Law Judge does not consider it appropriate to find that Respondent's failure to disclose his impaired objectivity also amounted to deceptive conduct within the meaning of Minn. R. 7200.5600 (1999) or constituted a violation of the separate and more general rule provision concerning failure to disclose client preferences for treatment or present options within the meaning of Minn. R. 7200.4900, subp. 4 (1999).

The Committee further alleged that Respondent exploited his relationship with Client No. 2 for his own benefit and engaged in unprofessional conduct with respect to Client No. 2. With respect to the first of these allegations, Dr. Terhune testified that, if a psychologist is involved as a treating psychologist with an individual while also at the same time trying to form a romantic relationship with that individual's partner, the objectivity of the psychologist will be impaired and the psychologist's needs will be met rather than the needs of the client. In Dr. Terhune's opinion, Client No. 2 was placed at risk of harm because Respondent had his objectivity impaired by the developing relationship with Alleged Client No. 1 to the point where the goals of therapy might not be favorable to the client.[29] In contrast, Mr. Schoener testified that there was no reason to believe Respondent was exploiting his professional relationship with Client No. 2 since all he got out of relationship was fees.[30] Mr. Schoener indicated that

Respondent's conduct was not exploitative of his relationship with Client No. 2 during the therapy period if Respondent's romantic feelings for Alleged Client No. 1 started after the termination of the therapy of Client No. 2 on November 12, 1992.[31] If Respondent's feelings for Alleged Client No. 1 developed in December of 1992, well after the termination of the therapy of Client No. 2, Mr. Schoener testified that Respondent was not obligated to tell Client No. 2 of his feelings for his wife.[32]

There was no convincing evidence that the Respondent had sexual or romantic feelings about Alleged Client No. 1 during the two-week period that he saw Client No. 2 for therapy—it appears, based upon all of the evidence, that those feelings came at a later time. Intimate touching between Respondent and Alleged Client No. 1 did not occur until March, 1993, and they did not have sexual intercourse until June, 1993. Although Alleged Client No. 1 and Respondent acknowledged their mutual attraction on October 30, Respondent immediately spoke with Alleged Client No. 1 about boundaries given that both of them were married. It is apparent from the testimony and relevant journal entries that Alleged Client No. 1 and Respondent considered their relationship to be merely a friendship at that point and were encouraging each other to attempt to work out problems in their marriages. Moreover, there is no evidence that Respondent conducted the grief counseling with Client No. 2 in a fashion that was designed to afford Respondent some advantage in his relationship with Alleged Client No. 1 or benefit him in any other way. Accordingly, it does not appear that Respondent in any way exploited his professional relationship with Client No. 2 for Respondent's own emotional, financial, sexual, or personal advantage or benefit within the meaning of Minn. R. 7200.4810, subp. 2(E) (1999).

The Committee has established by a preponderance of the evidence, however, that Respondent engaged in unprofessional conduct with respect to Client No. 2. As noted above, the Board is empowered by Minn. Stat. § 148.941, subd. 2, to impose disciplinary action against a licensee who "has engaged in unprofessional conduct or any other conduct which has the potential for causing harm to the public, including any departure from or failure to conform to the minimum standards of acceptable and prevailing practice without actual injury having to be established" or has "engaged in conduct reflecting adversely on the . . . licensee's ability or fitness to engage in the practice of psychology." Minn. R. 7200.5700 specifies that a psychologist must not engage in unprofessional conduct, which is defined to encompass conduct that either violates the Rules of Conduct set forth in Minn. R. 7200.4600 to 7200.5600 or violates "those standards of professional behavior that have become established by consensus of the expert opinion of psychologists as reasonably necessary for the protection of the public interest." The Supreme Court in Reyburn v. Minnesota State Board of Optometry[33] approved a similar definition and further indicated that "every member of the profession should be regarded as an expert" in establishing "the necessity for and the existence of such standards." Moreover, case law in Minnesota and elsewhere recognizes that professional fitness does not necessarily have to be linked to the performance of the individual's professional duties[34] and has upheld the constitutionality of "necessarily broad standards of professional conduct."[35]

Although Mr. Schoener testified in his deposition that there is no consensus in the field concerning whether having sex with the wife of a former client is unprofessional,[36] both experts agreed in hearing testimony that it was unprofessional conduct for a Respondent to have a sexual relationship with the wife of Client No. 2, a former client, due to the close proximity of the sexual relationship to the end of the professional relationship with Client No. 2.[37] Such conduct undermines a psychologist's ability to provide an objective service and would run the risk of harming the individuals involved who sought psychological services and later found out that was not what occurred.[38] The client involved is likely to experience a sense of betrayal.[39] Respondent himself agreed that it was inappropriate for him to have allowed a relationship to develop with Alleged Client No. 1 since Respondent was a friend of Client No. 2 and also had been a client of Respondent.[40] Respondent admitted to Investigator Renstrom that "he had a dual relationship with [Client No. 2] and boundary issues with [Alleged Client No. 1]."[41] As a result, it has been determined that Respondent engaged in unprofessional conduct in violation of Minn. R. 7200.5700 (1999), by violating "those standards of professional behavior that have become established by consensus of the expert opinion of psychologists as reasonably necessary for the protection of the public interest."

The Committee also alleged that Respondent failed to maintain accurate and complete therapy records with respect to Client No. 2, engaged in deceptive conduct with respect to those records, and attempted to mislead the Board investigator by making false statements or representations with respect to the therapy records of Client No. 2. As part of the summary disposition ruling, the Judge determined that it was appropriate to grant the Board partial summary disposition as to the Board's allegation that Dr. Carlson's therapy records for Client No. 2 did not contain an accurate chronological listing of all client visits or a client personal data sheet. As noted in the Findings of Fact above, the Respondent moved for reconsideration of this portion of the summary judgment ruling at the commencement of the hearing and pointed out that certain additional records relating to Client No. 2 had been in the possession of counsel but had inadvertently been overlooked and had not been provided to the Committee during its investigation or discovery related to the contested case proceeding. The motion was taken under advisement, and evidence was permitted to be received into the hearing record relating to this issue.[42]

It is appropriate to grant the motion for reconsideration under the circumstances of this case. It would not be fair to penalize Respondent for the oversight of counsel. Based upon all of the documents that were actually contained in Respondent's file relating to Client No. 2, it is necessary to modify the ruling to find that Respondent's file did contain a client personal data sheet. Accordingly, Respondent did not violate Minn. R. 7200.4900, subp. 1a(C) (1999). However, as reflected in the Findings of Fact, it remains evident that Respondent's therapy records for Client No. 2 did not contain an accurate chronological listing of all client visits, in violation of Minn. R. 7200.4900, subp. 1a(A) (1999).

The final issue with respect to Client No. 2 is whether Respondent engaged in deceptive conduct with respect to the Client No. 2's therapy records, attempted to

mislead the Board investigator by making false statements or representations with respect to those records, and failed to cooperate with the Board's investigation. To evaluate this assertion, it is necessary to discuss the nature of the information and documents that Respondent provided to the Board and members of the public. It is evident, based on the Findings of Fact set forth above, that Respondent failed to maintain an accurate chronological listing of all client visits. He also created therapy records for Client No. 2 for the first time approximately ten months after Client No. 2 terminated therapy; misled Client No. 2 as to when the therapy notes had been written; rewrote his notes when he realized that the first set of notes had been erroneously dated; and failed to clearly indicate when the notes were written. It is also clear that Respondent attempted to mislead Board investigators by telling them that the therapy notes relating to Client No. 2 had been written within a month of the termination of therapy. In 1996, during an interview with Investigator Renstrom, Respondent initially said that he had written his treatment notes for Client No. 2 within a month of the conclusion of Client No. 2's therapy sessions. Later during the same conversation, when the investigator asked Respondent about the incorrect reference in the notes to 1993, he admitted that in fact he wrote the notes in 1993, not in 1992.[43] Respondent admitted in an interview with the Board of Psychology in July of 1996 that the reason for his initial statement to Ms. Renstrom was, "I guess I didn't want them to know that that I had done what I did."[44] He admitted that what he had done looked bad, was "inappropriate" and constituted "very poor recordkeeping."[45]

It is clear that Respondent violated professional standards of care when he failed to keep records in close proximity to delivery of the service. While it is not inappropriate for a psychologist to construct the records as best as he or she can remember at a later date if the psychologist failed to keep contemporaneous records, the psychologist must set forth the date on which the records were constructed.[46] Despite Respondent's protestations, it is also evident that he attempted to deceive or mislead the investigators when he claimed to have written the treatment notes within a month of the conclusion of Client No. 2's therapy sessions. It also appears that Respondent attempted to deceive Client No. 2 and his attorney about his failure to maintain appropriate records. Violations of Minn. Stat. § 148.941, subd. 2(a)(2) (1998), Minn. R. 7200.4900, subp. 1a(A), and Minn. R. 7200.5600 (1999) thus have been found. All of the violations of the Rules of Conduct found with respect to Client No. 2 also constitute unprofessional conduct pursuant to Minn. R. 7200.4500, subp. 3 (1999).

Client No. 3:

Respondent argues for the first time in his responsive memorandum that Client No. 3's failure to file a written complaint with the Board pursuant to Minn. Stat. § 214.10, subd. 2, deprives the Judge (and presumably the Board) of jurisdiction to determine whether disciplinary action should be recommended for Respondent's conduct with respect to Client No. 3. Chapter 214 of the Minnesota Statutes governs state examining and licensing boards, including the Board of Psychology, and provides general administrative guidelines for various regulatory activities. Minn. Stat. § 214.10, subd. 2, which pertains to investigations and hearings, provides in part that, "[b]efore scheduling

a disciplinary hearing, the executive director or executive secretary must have received a verified written complaint from the complaining party."

It is undisputed that Client No. 3 never filed a written complaint with the Board. Rather, the allegations concerning Client No. 3 were uncovered during the Board's investigation of the verified written complaints submitted by Clients No. 1 and 2. Respondent maintains that Minn. Stat. § 214.10, subd. 2, makes the filing of a written complaint a jurisdictional requirement. Because Client No. 3 never filed a written complaint, Respondent contends that the charges contained in the Notice of and Order for Hearing concerning his alleged conduct with Client No. 3 must be dismissed.

While it is true that Minn. Stat. § 214.10, subd. 2, requires the filing of a "verified written complaint" by the complaining party before a disciplinary hearing may be scheduled, the final sentence of this subdivision states that "[n]othing in this section shall preclude a member of the Board, executive director, or executive secretary from initiating a complaint." Consequently, a Board member or the Board's executive director may be the complaining party with respect to Respondent's conduct with Client No. 3. In addition, neither this section nor Minn. Stat. § 214.103, which specifically governs complaint and investigation procedures of "health-related licensing boards," provides guidelines as to the required form or content of a "verified written complaint." Given that the Notice of and Order for Hearing is signed by the Board's executive secretary, details the charges against Respondent, and attests that the charges are based upon a verified statement of fact, the Judge finds that this document is sufficient to satisfy the written complaint requirement.[47]

Alternatively, Minn. Stat. § 214.103, subd. 7, which specifically governs initiation of contested case hearings involving health-licensing boards, may be read as superseding the more general requirements of Minn. Stat. § 214.10, subd. 2. Minn. Stat. § 214.103 applies to all "health-related licensing boards" and the Board of Psychology is defined as such a board.[48] Both Minn. Stat. § 214.10 and § 214.103 provide that the Board may investigate and resolve "complaints or other communications, whether oral or written," against regulated persons.[49] Thus, it is not a requirement under either of these sections that a complaint be in writing in order to initiate an investigation into the conduct of a regulated person. Unlike Minn. Stat. § 214.10, subd. 2, however, Minn. Stat. § 214.103, subd. 7, does not require that the Board receive a verified written complaint before scheduling a disciplinary hearing. Moreover, Minn. Stat. § 214.103, subd. 1, lists the particular subdivisions of Minn. Stat. § 214.10 that are not intended to be superseded by this section. And Minn. Stat. § 214.10, subd. 2, which requires the receipt of verified written complaint, is not among those listed. Consequently, based on the rule of statutory construction that exceptions expressed in a law are to be construed as excluding all others, Minn. Stat. § 214.103, subd. 7, may be read as superseding Minn. Stat. § 214.10, subd. 2.

Finally, pursuant to Minn. Stat. §§ 148.905 and 148.941, subd. 2, the Board has personal and subject matter jurisdiction to investigate and discipline licensees for violations of statute or rule. Even if the Board failed to strictly comply with the written complaint requirement with respect to Client No. 3, such failure should be viewed as a

procedural error and not a jurisdictional defect mandating dismissal of the charges where Respondent has received adequate notice of the allegations against him concerning Client No. 3.[50] In this matter, Respondent has been on notice since at least July 1996 of the dual relationship allegations regarding Client No. 3. In July 1996, Respondent appeared with counsel to discuss these and other allegations with the Complaint Resolution Committee. And Respondent fully participated in the contested case hearing pursuant to the Notice of Hearing without objection.

Based on all of the above, the Administrative Law Judge finds that the lack of a written complaint from Client No. 3 does not deprive the Judge or the Board of jurisdiction to determine whether Respondent's conduct warrants discipline.

With respect to Client No. 3, the Committee alleged that Respondent provided her with psychological services while his objectivity was impaired by a dual relationship. Based upon careful consideration of the record as a whole, it is concluded that Client No. 3 in fact did receive psychological services from Respondent, and that the services were provided despite the existence of a dual relationship between Respondent and Client No. 3. As set forth in the Findings of Fact above, it is evident that Client No. 3 identified a specific need for therapy for which she approached Respondent; Respondent agreed to provide the service for free, after a discussion about fees; there was a lengthy period of time (twelve to fifteen months) when Client No. 3 and Respondent had formal appointments; Respondent administered the MMPI to Client No. 3; Respondent took at least some notes, and reviewed Client No. 3's family history, including the history of the abuse for which she was seeking counseling; and Respondent gave Client No. 3 assignments to complete as part of her counseling. All of these factors are indications that psychological services were being provided. Respondent and Client No. 3 had a long-standing social relationship prior to her request that she see him for counseling, resulting in a situation in which Respondent's objectivity was impaired due to the existence of a dual relationship.

Client No. 3 provided straightforward and credible testimony concerning the nature of the issues that she discussed with Respondent. The types of issues she identified discussing with Respondent relating to sexual, physical, and verbal abuse in her family of origin and issues in her current family would not have typically arisen in the context of Home Group sessions, even those conducted on a 1:1 basis. In addition, there was no praying or Bible study during the sessions, in contrast with the agenda at typical Home Group meetings. The Judge found the testimony of Client No. 3 that Respondent administered an MMPI to her to be credible and convincing, despite Respondent's denial that he gave her such a test and his failure to maintain a record of the test. A psychologist's administration of the MMPI to an individual is a sign that there is a professional relationship, and stated that the administration of an MMPI involves the provision of a psychological service.[51]

In reaching the determination that Respondent provided psychological services to Client No. 3, the Judge also finds it significant that Respondent continued to see Client No. 3 in his office during the period of July through December of 1990, even though Respondent's participation in the Home Group ended in June 1990.[52] This

undermines Respondent's claim that he saw Client No. 3 only as a Home Group leader. Also, Respondent's claim that Client No. 3 came to him to discuss discomfort in her role as a pastor's wife is inconsistent with his statement to the Committee in July 1996 that she was talking to him about her family of origin. Respondent also agreed at that time that counseling was "definitely" taking place and that this was another example of a dual relationship.[53] Respondent also told the Committee he was in the role of providing Client No. 3 with "professional psychological services."[54] Respondent's testimony that he refused to discuss sexual abuse issues with Client No. 3 and was merely seeing her for church-related counseling as a Home Group member, not as a psychologist, is not convincing in light of these inconsistencies.

As Respondent's own expert indicated, Respondent should have been alerted that Client No. 3 was asking him to provide a professional service rather than religious counseling at the point at which Client No. 3 and her husband discussed a fee with Respondent. Mr. Schoener also testified that the relationship between Client No. 3 and Respondent became one where Client No. 3 "could well have been a client and where at least it's understandable that she might, in retrospect, have believed that she was."[55] Moreover, because of Respondent's previous social relationship with Client No. 3, Mr. Schoener indicated that Respondent should have clarified their relationship during the alleged counseling sessions and either refocused the communication on religious issues or terminated the counseling because Client No. 3 was a friend.[56]

Accordingly, it has been determined that the lack of a written complaint from Client No. 3 does not deprive the Judge or the Board of jurisdiction to determine whether Respondent's conduct warrants discipline, and that Respondent provided Client No. 3 with psychological services while his objectivity was impaired by a dual relationship, in violation of Minn. R. 7200.4810, subds. 1-2 (1999). Moreover, because there is no evidence that Respondent notified Client No. 3 orally and in writing that he could no longer see her professionally or assist her in obtaining services from another professional, it appears that Respondent also violated Minn. R. 7200.4810, subp. 3 (1999), and engaged in unprofessional conduct in violation of Minn. Stat. § 148.941, subd. 2(a)(3) and Minn. R 7200.5700. Because these provisions are not ambiguous, the Administrative Law Judge does not agree with the Committee that it is necessary to resort to the American Psychological Association's Ethical Principles for clarification of these duties. The Committee has also proven by a preponderance of the evidence that Respondent failed to maintain accurate and complete records with respect to Client No. 3, in violation of Minn. R. 7200.4900, subp. 1a (1999), since he failed to keep any records at all concerning Client No. 3.

The Committee did not provide persuasive evidence that Respondent failed to disclose to Client No. 3 his preferences for choice of treatment or outcome in violation of Minn. R. 7200.4900, subp. 4, or exploited the professional relationship with Client No. 3 for his own emotional, financial, sexual, or personal advantage or benefit in violation of Minn. R. 7200.4900, subp. 7a. In addition, because the Committee did not provide notice in the original Notice of Hearing that it would allege violations of Minn. Stat. § 148.907, subd. 2(5) (relating to lack of good moral character) or Minn. R. 7200.4900, subps. 5 (relating to notice to the client when there is a divergence of interests which

impairs the professional relationship) or 6 (relating to termination of the professional relationship when the client is not likely to benefit from continued professional services or the services are no longer needed), those provisions are not properly considered in the present case.

Witness No. 4:

In the original Notice of and Order for Hearing, the Committee asserted that Respondent engaged in unprofessional conduct with respect to Witness No. 4 and that he provided therapy to her while his objectivity was impaired by a dual relationship. Near the beginning of the hearing, however, the Committee announced that it would not seek to prove that Respondent provided psychological services to Witness No. 4 (or Alleged Client No. 1) by virtue of participation in the church-sponsored Hope Group. As a result, the Committee no longer claims that Witness No. 4 received psychological services from Respondent as a result of her participation in the Hope Group.

The Administrative Law Judge agrees with the assessment of Dr. Terhune that Respondent's behavior toward Witness No. 4 is consistent with his overall pattern of boundary violations but does not violate any of the Rules of Conduct applicable to psychologists.[57]

Clients No. 5 and 6:

In its Notice of and Order for Hearing, the Committee alleged that Respondent provided therapy to Clients No. 5 and 6 while his objectivity was impaired by a dual relationship, engaged in a sexual relationship with Client No. 5 within two years after the last professional contact, and failed to maintain accurate and complete therapy records. Prior to the hearing, by letter dated February 16, 1999, the Administrative Law Judge notified counsel that she had determined that it was appropriate to grant the Board partial summary disposition as to its allegation that Respondent's therapy records for Clients No. 5 and 6 did not contain an accurate chronological listing of all client visits. Accordingly, it was determined that he failed to maintain an accurate record for each client as required by Minn. R. 7200.4900, subp. 1a. Respondent did not seek reconsideration of this ruling and, as reflected in the Findings of Fact, this determination is supported by evidence introduced at the hearing.

In addition, the Administrative Law Judge granted summary disposition with respect to the Board's allegation that Dr. Carlson violated Minn. R. 7200.4900, subp. 8, by engaging in sexual intercourse or other physical intimacies with a former client within two years following the date of the last professional contact with the client. It is undisputed that Dr. Carlson engaged in a sexual relationship with Client No. 5, a former client, within two years of the date of his last professional contact with her. The therapeutic relationship between Dr. Carlson and Client No. 5 terminated on April 5, 1995; they first had sexual intercourse in approximately February, 1996. It thus is evident that the rule was violated. In fact, based upon evidence adduced at the hearing, Dr. Carlson continued to live with Client No. 5 in a romantic relationship as of the date of

the hearing in this matter. The entry of summary disposition on this issue was appropriate. The Respondent did not seek reconsideration.

Both Respondent and Client No. 5 asserted during the hearing their belief that the application of the rule prohibiting sexual intercourse for two years from the date of the last professional contact violates their First Amendment right of freedom of association.[58] Respondent further expanded upon this contention in his post-hearing brief.[59] Respondent argues that the right to engage in sexual intercourse is implicit in the fundamental right to make decisions regarding childbearing and contends that the Board's "two-year" rule has not been narrowly tailored to further a compelling state interest due to the arbitrary nature of the two-year cut-off. The Committee responded that the two-year rule does not infringe on any fundamental constitutional right and has a rational basis because it is reasonably related to the legitimate government interest in maintaining the integrity of the profession of psychology and ensuring that clients and former clients are protected from sexual exploitation by their treating psychologists. The Committee contends that the rule is narrowly tailored and reasonably related to those goals and asserts that appellate courts have repeatedly upheld limitations on psychologists having sexual intercourse with clients or former clients when presented with a First Amendment challenge.[60]

As noted during the hearing, the arguments raised by the Respondent relating to the constitutionality of the rule provision are outside the subject matter jurisdiction of the Administrative Law Judge in this matter.[61] Such claims must be directed to the judicial branch. The parties were allowed to make a record with respect to the constitutional argument in order to ensure that they had preserved the issue for any later appeal from the final agency decision. The constitutional issue was addressed in hearing testimony, exhibits,[62] the April 14, 1999, Supplemental Affidavit filed by the Board's expert, and, as noted above, the parties' post-hearing briefs.

The Administrative Law Judge declined to enter summary disposition for the Board on the claim that Dr. Carlson failed to cooperate with an investigation of the Board as required by Minn. Stat. § 148.941, subds. 2(a)(8) and 4, when he told the Committee that he did not have a romantic or sexual relationship with Client No. 5.[63] The ruling was based upon the fact that the Notice of and Order for Hearing did not include this assertion. Although the Committee filed a motion after the hearing to amend the Notice of and Order for Hearing to include this allegation, it later decided to withdraw the amendments in the interest of avoiding additional expense and delay and agreed that this matter should proceed pursuant to the Committee's initial Notice of Hearing. Accordingly, this allegation, while proven (and, in fact, admitted by Respondent), is not properly considered as a basis for disciplinary action against Respondent.

The remaining issues regarding Clients No. 5 and 6 are whether the Respondent provided therapy to Clients No. 5 and 6 while his objectivity was impaired by a dual relationship; whether Respondent's sexual relationship with Client No. 5 amounted to prohibited exploitation of a client in violation of Minn. R. 7200.4810, subp. 2(E) and Minn. R. 7200.4900, subp. 7a (1999); whether Respondent's sexual activity with Client

No. 5 violated the prohibition against unprofessional conduct contained in the governing statute and rules; whether Respondent's relationship with Client No. 5 violated the prohibition against unprofessional conduct because he never suggested she defer making a decision to end her marriage, failed to properly manage her transference and his own lack of objectivity, and failed to seek supervision when he decided to violate the two-year rule; and whether Respondent also engaged in unprofessional conduct as to Client No. 6 by encouraging a social relationship with Client No. 5 at the same time as he was providing marital therapy to Clients No. 5 and 6. Each of these issues will be discussed in turn.

The Committee primarily alleges that, due to the transference and countertransference that were occurring between Client No. 5 and Respondent during their therapeutic relationship, Respondent's objectivity in providing therapy to both Clients No. 5 and 6 was impaired. The issues of transference and countertransference were discussed by the Minnesota Supreme Court in St. Paul Fire & Marine Insurance Co. v. Love.[64] In that case, Dr. Love, a licensed psychologist, began counseling a woman in December 1985 for marital difficulties and for problems arising out of her childhood sexual abuse. Dr. Love thereafter began counseling her husband in March 1986, and began engaging in sexual contact with the wife in May or June 1986. Dr. Love claimed that their relationship was not one of therapist/patient; the wife claimed that it was. The insurance company denied coverage on the ground that the claims did not result from professional services provided by the psychologist, and brought a declaratory judgment action. An expert psychologist offered an opinion that the psychological phenomena known as transference and countertransference had occurred and that the phenomena had been mishandled by Dr. Love. The Supreme Court described transference as "[t]he process whereby the patient displaces on to the therapist feelings, attitudes and attributes which properly belong to a significant attachment figure of the past, usually a parent, and responds to the therapist accordingly."[65] The Court went on to explain:[66]

> Transference is common in psychotherapy. The patient, required to reveal her innermost feelings and thoughts to the therapist, develops an intense, intimate relationship with her therapist and often "falls in love" with him. The therapist must reject the patient's erotic overtures and explain to the patient the true origin of her feelings. A further phenomenon that may occur is countertransference, when the therapist transfers his own problems to the patient. When a therapist finds that he is becoming personally involved with the patient, he must discontinue treatment and refer the patient to another therapist.
>
> "The medical and legal communities uniformly agree that a psychiatrist's mishandling the transference phenomenon during treatment and taking sexual advantage of his patient is malpractice or gross negligence." Louisell & Williams, 2 Medical Malpractice p 17A.27, at 85-86 (and cases therein cited) (1989).

* * *

> [T]he professional services provided by a therapist require him to enter into a therapeutic alliance with the patient that invariably induces love-transference. Transference, of course, occurs at times in other relationships including that of medical doctor and patient, but the therapist alone elicits transference as a regular, accepted part of his practice in treating marital and sexual disorders. [Citation omitted.] The therapist must encourage the patient to express her transferred feelings, while rejecting her erotic advances; at the same time, he must explain to the patient that her feelings are not really for him, but that she is using him a symbolic role to react to some other significant person in her life. In short, the therapist must both encourage transference and discourage certain aspects of it. This may be difficult to do and presents an occupational risk. The therapeutic alliance in this situation gives rise to a duty, imposed by professional standards of care as well as by ethical standards of behavior, to refrain from a personal relationship with the patient, whether during or outside therapy sessions. This is because the personal relationship infects the therapy treatment, rendering it ineffective and even harmful.

After further discussion, the Court concluded that, when the transference phenomenon pervades the therapeutic relationship, sexual conduct between the therapist and patient arising from the transference may be viewed as the result of a failure to provide proper treatment of the transference. Because the patient's claim was thus viewed as resulting from the provision of improper professional services or the withholding of proper services, the wife's claim was deemed to be covered by the policy. Her husband's claim was also found to be covered by the policy, since Dr. Love's mishandling of his wife's transference impaired the professional services that were owed to him.[67]

The Committee provided ample evidence in this proceeding relating to the power imbalance that exists in the psychologist/client relationship, the resulting fiduciary responsibility of the psychologist, and the consensus in psychology that there is always some risk of harm for current and former clients due to the vulnerability of the client that is created by virtue of the power differential. According to Dr. Terhune's unrebutted Supplemental Affidavit, if a psychologist provides a psychological service while also attempting to engage in another role with that client (such as a social or sexual relationship with the client) a dual relationship results, and the objectivity of the psychologist may be impaired. A psychologist who uses the professional relationship to develop a social or romantic relationship with either a current or a former client may be exploiting the trust and personal information obtained during treatment. The professional literature contains clear evidence of harm to clients and former clients resulting from sexual relationships with their therapists. There are also recognized risks of harm to the public when they perceive that a current or former client has been exploited. All of these risks continue after the professional relationship is terminated, and the client's vulnerability may continue for years. Where other options are available, psychologists are expected to avoid dual relationships due to their high potential for harm due, in part, to the transference that naturally occurs during therapy. In determining whether a violation of professional standards has occurred, "[a]ssessment

of whether harm has actually occurred is not a necessary component." Moreover, transference "clearly does not automatically end at the termination of a psychological service."[68]

Indeed, Respondent agreed that a client can be emotionally dependent on a therapist without realizing that dependence, a client may remain emotionally dependent upon a therapist even though the professional relationship has ended, and emotional dependence interferes with the recovery process and the client's ability to make informed choices.[69] Respondent also admitted that if a client is significantly emotionally dependent on his or her therapist, it is possible that the client's participation in a sexual relationship with the therapist may include elements of unconscious involuntary involvement, and that a psychologist would be wrong to take advantage of a client under those conditions.[70] Thus, it would not be proper to attach great weight to Client No. 5's testimony that she has not been exploited by Respondent or treated inappropriately in any way.

The therapy records relating to Client No. 5 show that both transference and countertransference were occurring between Client No. 5 and Respondent during at least the latter part of their therapeutic relationship. In addition, Alleged Client No. 1 testified that, in approximately August of 1993, Respondent told Alleged Client No. 1 of his attraction to Client No. 5 and the possibility that he would meet Client No. 5 in California.[71] Respondent did not offer any testimony disputing that this happened. It thus appears that Respondent was attracted to Client No. 5 and was contemplating a personal involvement with Client No. 5 as early as August of 1993, when she and Client No. 6 were just a few months into their therapeutic relationship with Respondent.[72] Based upon all of the circumstances in this case, it is evident that Respondent continued to provide psychological services to Clients No. 5 and 6 when his objectivity or effectiveness was impaired by virtue of a dual relationship, in violation of Minn. R. 7200.4810 (1999), and Respondent's objectivity or effectiveness was impaired as a result. It is also evident that Respondent failed to notify Clients No. 5 and 6 orally and in writing that he could no longer see them professionally or assist them in obtaining services from another professional, in violation of Minn. R. 7200.4810, subp. 3 (1999).

The next issue is whether Respondent's sexual relationship with Client No. 5 reflected the exploitation of a client in violation of Minn. R. 7200.4810, subp. 2(E) and Minn. R. 7200.4900, subp. 7a (1999). Minn. R. 7200.4810, subp. 2(E), specifies that a psychologist's objectivity or effectiveness is impaired whenever "the psychologist exploits the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit." At the time that this rule was first proposed by the Board, the Board indicated that the term "exploitation" meant that "the psychologist's goal is self-directed, not client-directed."[73] Similarly, Minn. R. 7200.4900, subp. 7a, states that a psychologist "must not exploit in any manner the professional relationship with a client for the psychologist's emotional, financial, sexual, or personal advantage or benefit." The Administrative Law Judge is convinced, based upon all of the evidence, that Respondent in fact exploited the professional relationship with Client No. 5 in violation of these rule provisions. Respondent exploited Client No. 5 when he engaged in a social and sexual relationship with her to meet his own needs,

and he misused personal information he obtained during therapy, including the strong attraction she expressed towards him, as a foundation for their social relationship. Respondent engaged in this conduct despite his knowledge of the harm that he had caused to Alleged Client No. 1 and Client No. 2 and his awareness of his own vulnerability to this kind of attraction, as reflected in the journal entries cited in the Findings of Fact.

An additional issue is whether Respondent's sexual relationship with Client No. 5 violates the prohibition against unprofessional conduct set forth in Minn. Stat. § 148.941, subd. 2(a)(3) (1998), and Minn. R. 7200.5700 (1999). As noted above with respect to Client No. 2, both experts agreed that it was unprofessional conduct for a psychologist to have a sexual relationship with the wife of a former client where the sexual relationship occurs close in time to the end of the professional relationship with the former client. Respondent became physically intimate with Client No. 5 in early 1996 and first engaged in sexual intercourse with her in approximately February of 1996. His last session with Client No. 6 occurred in February of 1995 and Client No. 6 formally terminated therapy on June 21, 1995. Respondent's sexual involvement with Client No. 5 thus occurred within one year of the end of his professional relationship with Client No. 6. As noted by the experts who testified at the hearing, such conduct undermines a psychologist's ability to provide an objective service, runs the risk of harming the individuals involved who sought psychological services and later found out that was not what occurred, and is likely to cause the client involved to experience a sense of betrayal. Respondent admitted that his relationship with Client No. 5 had the potential for harm or a feeling of betrayal.[74] It is evident from the letter that Client No. 6 sent Respondent dated June 21, 1995, that Client No. 6 in fact felt betrayed. As a result, it has been determined that Respondent engaged in unprofessional conduct in violation of Minn. R. 7200.5700 (1999) and Minn. Stat. § 148.941, subd. 2(a)(3) (1998), when he engaged in a sexual relationship with the wife of a former client, in addition to violating the rule prohibiting sex with a former client within two years of treatment.

The Committee also asserted that Respondent's relationship with Client No. 5 violated the prohibition against unprofessional conduct because he never suggested she defer making a decision to end her marriage, failed to properly manage her transference and his own lack of objectivity, and failed to seek supervision when he decided to violate the two-year rule. The Committee's first assertion is not supported by the evidence, since Respondent's testimony, supported by his therapy notes, indicated that he told Client No. 5 on March 22, 1995, to focus on what was happening with Client No. 6, her children, and "the woman trying to emerge in her and not look to future relationships with men."[75] The last of the Committee's assertions also is not supported by the evidence. In this regard, the Committee relied heavily on Ex. 38A, the additional set of notes relating to Client No. 5's termination summary, and argued that Respondent anticipated an ongoing social relationship with Client No. 5 after their formal termination. Because the Committee withdrew its amendment to the Notice of Hearing that would have made this an issue in the proceeding, and because Respondent was never afforded an opportunity to provide an explanation of this additional set of notes, Ex. 38A is not properly relied upon as a basis for disciplinary action in this proceeding. The Administrative Law Judge was never provided information sufficient to make a

factual determination of which version of the termination summary was accurate, and thus is unable to conclude that Respondent was attempting to encourage a social relationship with Client No. 5.

However, the Administrative Law Judge does find that Respondent engaged in unprofessional conduct in violation of Minn. R. 7200.5700 (1999) and Minn. Stat. § 148.941, subd. 2(a)(3) (1998), when he failed to properly manage Client No. 5's transference and his own lack of objectivity, and failed to seek supervision when he decided to violate the two-year rule by entering into a social and sexual relationship with Client No. 5. At a minimum, Respondent should have discussed with Client No. 5 her option to terminate therapy with Respondent in light of the transference issues; he never did so. Respondent admitted that when he became romantically involved with Client No. 5, he was aware of the Board's rule prohibiting such conduct within two years of the termination of therapy.[76] Despite the fact that he knew of the prohibition, he did not seek supervision before embarking on a social and sexual relationship with Client No. 5. In addition, all of the rule violations set forth above with respect to Clients No. 5 and 6 also constitute unprofessional conduct pursuant to Minn. R. 7200.4500, subp. 3 (1999).

Finally, the Committee did not establish by a preponderance of the evidence that Respondent engaged in deceptive conduct within the meaning of Minn. R. 7200.5600 (1999) by maintaining two versions of two session notes for Client No. 5 or by failing to disclose his impaired objectivity to Clients No. 5 and 6, or that Respondent should be deemed to have failed to disclose client preferences for treatment or present options within the meaning of Minn. R. 7200.4900, subp. 4 (1999). Moreover, there is no convincing evidence that Respondent exploited the professional relationship with Client No. 6 for his own emotional, financial, sexual, or personal advantage in violation of Minn. R. 7200.4810, subp. 2(E) and 7200.4900, subp. 7a (1999).

Conclusion

For all of the reasons discussed above, the Administrative Law Judge has recommended that disciplinary action be taken against Respondent's license.

B.L.N.

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[1] References in these Findings of Fact to "T. [page number.]" refer to the transcript in this matter. References in these Findings of Fact to "Ex. [number]" refer to the exhibits filed in this matter.

[2] T. 974-81, 985.

[3] T. 1051-56.

[4] T. 830-32.

[5] T. 856.

[6] T. 397.

[7] For example, the contention of the Committee's expert witness that the Respondent gave Alleged Client No. 1 a greeting card which drew on information presented in Alleged Client No. 1's journal entry about a sailboat (T. 1019-21) was not adequately proven as a factual matter. Alleged Client No. 1 merely testified that a picture in Respondent's office of a boat was the subject of discussion between Respondent and Alleged Client No. 1. She did not make any connection between her December 9 journal entry and the card that Respondent gave her. Moreover, she testified that Respondent gave her the card in November or December, 1992; the relevant journal entry about a sailboat was dated December 9, 1992. See T. 325; Ex.7 at 700005. The Committee thus has not clearly established that the greeting card was given to Alleged Client No. 1 after Respondent read the December 9, 1992, journal entry, or that the card was related in any way to the journal entry.

[8] *See* T. 112, 123.

[9] T. 479.

[10] T. 865.

[11] Despite the Committee's arguments to the contrary, Alleged Client No. 1 did not testify at T. 131 that she regarded Respondent as an additional therapist. She merely stated, "[M]y experience of Steve being a psychologist allowed me the ability to let down a certain boundary or area of my life that I felt was safe to do with Steve." Alleged Client No. 1 did file an affidavit dated February 18, 1999, in connection with the summary disposition motion in which she indicated that she felt like she "had another therapist helping [her] with the issues [she] was in therapy to deal with." In any event, however, the individual's perception of whether she is a client is not determinative. In this case, any perception that Alleged Client No. 1 may have had that she was in a therapist/client relationship with Respondent was not reasonable in light of all of the circumstances.

[12] T. 1013-14, 1093-94.

[13] T. 992-94.

[14] T. 996-98.

[15] T. 998-99.

[16] T. 995-96.

[17] T. 855, 860-62.

[18] T. 857-58.

[19] T. 857-58.

[20] T. 917.

[21] T. 795.

[22] T. 794-95.

[23] T. 1236-38.

[24] T. 787-89.

[25] *See* Minn. R. 7200.4700, subps. 2, 4, 5, 10, and 12 (1999).

[26] T. 791.

[27] T. 1288.

[28] Because this provision is not ambiguous, there is no need to resort to the Ethical Principles of Psychologists or the Code of Conduct of the American Psychological Association as an aid in interpretation. See Minn. R. 7200.4500, subp. 4.

[29] T. 973.

[30] T. 881.

[31] T. 881-82.

[32] T. 891. The Committee argues in its reply brief for the first time that Client No. 2 remained Respondent's client throughout the time period of Respondent's affair with Alleged Client No. 1 because Respondent "never properly terminated his therapeutic relationship." Reply Brief at 11. The Committee does not fully explain its position in this regard, and its view is unsupported by any convincing testimony. It is undisputed that Client No. 2 terminated the therapeutic relationship himself on November 12, 1992. Although Respondent apparently did not conduct a closure session or offer a referral, there is no evidence that Client No. 2 sought a further session or requested a referral. Accordingly, it is the view of the Administrative Law Judge that Client No. 2's therapeutic relationship with Respondent ended on November 12, 1992.

[33] 247 Minn. 520, 523-24, 78 N.W.2d 351, 355 (1956). *Accord Padilla v. Minnesota State Board of Medical Examiners*, 382 N.W.2d 876 (Minn. App. 1986), *rev. denied* (Minn. April 24, 1986).

[34] *Zahavy v. University of Minnesota*, 544 N.W.2d 32 (Minn. App. 1996) (tenured professor's fitness in a professional capacity need not necessarily be tied to the professor's teaching, scholarship, and service but may include conduct not directly related to the performance of professional duties; termination for concealing dual employment from university was upheld). *See also In re Friedenson*, 574 N.W.2d 463 (Minn. App. 1998), *rev. denied* (Minn. April 30, 1998) (Court held that Board could properly consider physician's arrests for solicitation of prostitution in determining discipline, particularly where physician practiced in the area of obstetrics and gynecology, and noted that "[r]espect for appropriate boundaries is essential"); *Haley v. Medical Disciplinary Board*, 818 P.2d 1062 (Wash. 1991) (Court affirmed Board's conclusion that physician's extended sexual conduct with former teenaged patient amounted to unprofessional conduct; cited the "majority rule" that "disciplinary action may be taken against a medical or dental practitioner because of acts or offenses which are not directly connected with his technical competence to practice but which only evidence weakness of character which are regarded by the licensing authorities and the courts as inconsistent with the general standards of the profession"; concluded that conduct need not be narrowly related to the practice of the profession in order for it to indicate an unfitness to practice, and found conduct that casts disrepute on the medical profession in the eyes of the public was sufficient to indicate unfitness to practice).

[35] *In re Gillard*, 271 N.W.2d 785, 809 n.7 (Minn. 1978) (judicial disciplinary proceeding).

[36] Respondent's Memorandum in Opposition to Motion for Summary Disposition, Ex. E (Schoener deposition) at 60.

[37] T. 891-92, 970-71.

[38] T. 970-71.

[39] T. 893.

[40] T. 1287; Ex. 60 (October 1, 1994, journal entry).

[41] T. 805.

[42] T. 22-25.

[43] T. 792-93; see also T. 1318-19 and Ex. 41 at 410143-45.

[44] T. 1319-20; Ex. 41 at 410114.

[45] T. 805, 1318-20; Ex. 41 at 410144.

[46] T. 875.

[47] Any possible requirement that Client No. 3 herself also have filed a verified complaint is satisfied by her filing of an affidavit supporting the Committee's pre-hearing motion for summary disposition.

[48] Minn. Stat. § 214.01, subd. 2 (1998).

[49] Minn. Stat. §§ 214,10, subd. 1 and 214.103, subd. 2 (1998).

[50] *See In re Kirby*, 354 N.W.2d 410 (Minn. 1984) (Board's violation of its own rules of procedure did not violate due process where Respondent was sufficiently apprised of the allegations against him.)

[51] T. 909-10.

[52] *See* T. 1278-79.

[53] T. 1325-26; Ex. 41 at 410123-24.

[54] Ex. 41 at 410125.

[55] T. 842-43, 846.

[56] T. 845.

[57] Ex. 42 at 420003.

[58] T. 1209, 1282-83.

[59] *See* Respondent's Post-Hearing Brief at 22-23.

[60] Committee's Post-Hearing Brief at 7-12; Committee's Reply Brief at 13-14.

[61] *See*, e.*g., Neeland v. Clearwater Memorial Hospital,* 257 N.W.2d 366, 369 (Minn. 1977); *In re Rochester Ambulance Service*, 500 N.W. 2d 499-500 (Minn. App. 1993); *Holt v. Board of Medical Examiners*, 431 N.W.2d 905 (Minn. App. 1988), *rev. denied* (Minn. Jan. 13, 1989); and *Padilla v. State Board of Medical Examiners*, 382 N.W.2d 876, 882 (Minn. App. 1986), *rev. denied* (Minn. April 24, 1986).

[62] *See* Ex. 54 (Statement of Need and Reasonableness relating to the "two-year rule" at the time it was first proposed and Report of Administrative Law Judge George A. Beck in rulemaking proceeding which found that the Board had shown the need for the rule and the reasonableness of the provision).

[63] Respondent initially informed Committee investigators in March of 1996 that his relationship with Client No. 5 was platonic. T. 806, 1321. He again told the Committee in July 1996 that he had only a

friendship with Client No. 5. T. 1321-25; Ex. 41 at 410154-56, 410166 [during the Committee proceedings, Client No. 5 was referred to as Client No. 4; see T. 1322-23]. During discovery, Respondent admitted that he and Client No. 5 first engaged in sexual intercourse in February, 1996.

[64] 459 N.W.2d 698 (1990).

[65] 459 N.W.2d at 700, *quoting* S. Waldron-Skinner, *A Dictionary of Psychotherapy* 364 (1986).

[66] *Id*. at 700-03 (footnotes omitted).

[67] *Id*. at 702.

[68] Terhune Supplemental Affidavit at 4-8.

[69] T. 1410.

[70] T. 1410-12.

[71] T. 270-71.

[72] Mr. Schoener's opinion that there was no basis for believing that Respondent had impaired objectivity due to a dual relationship because he was not romantically involved with Client No. 5 during the timeframe of therapy is significantly undermined by the undisputed evidence that Respondent was attracted to Client No. 5 at a fairly early point in their therapeutic relationship.

[73] Ex. 54 at 28.

[74] T. 1383.

[75] T. 1397-99; Ex. 38 at 380018.

[76] T. 1441-42.